REPORT OF

COURT MANAGEMENT SYSTEMS

TO THE

MARYLAND BAR FOUNDATION INC.

ON THE

ADMINISTRATION OF CRIMINAL JUSTICE

IN

BALTIMORE CITY

REPORT ON THE ADMINISTRATION OF CRIMINAL JUSTICE IN BALTIMORE CITY

TO

MARYLAND BAR FOUNDATION

MARYLAND BAR FOUNDATION

INCORPORATED

EXECUTIVE SECRETARY:
S. VANNORT CHAPMAN
813 MERCANTILE TRUST BUILDING
BALTIMORE, MD. 21202
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March 15, 1971

The Honorable Marvin Mandel, Governor of Maryland
Honorable Hall Hammond, Chief Judge, Court of Appeals of Maryland
Honorable Robert C. Murphy, Chief Judge, Court of Special Appeals of Md.
Honorable Dulany Foster, Chief Judge, Supreme Bench of Baltimore City
Honorable I. Sewell Lamdin, Chief Judge, Municipal Court of Baltimore City

Dear Governor Mandel and Judges Hammond, Murphy, Foster and Lamdin:

On behalf of the Maryland Bar Foundation, Inc. I have the honor to transmit to you herewith a Report on the Administration of Criminal Justice in Baltimore City, prepared by Court Management Systems for the Maryland Bar Foundation.

This Report is based on a survey commissioned by the Maryland Bar Foundation in co-operation with the Administrative Office of the Courts of the State of Maryland. Funding was provided by a cash grant from the Maryland Bar Foundation which was used to match the Federal funds made available by the Law Enforcement Assistance Administration of the U. S. Department of Justice and the Governor's Commission on Law Enforcement and the Administration of Justice.

The survey of the criminal courts of Baltimore City was conducted by Court Management Systems under the supervision and guidance of a Steering Committee of eleven Fellows of the Maryland Bar Foundation. Further advice, suggestions, and criticism were provided by an Advisory Group, consisting of seventeen judges, prosecutors, criminal defense counsel, and court administrators. H. Vernon Eney, Esquire, Chairman of the Fellows, acted as chairman of the Steering Committee and also as chairman of the Advisory Group.

Both Chief Judge Dulany Foster of the Supreme Bench and Chief Judge I. Sewell Lamdin of the Municipal Court served as members of the Advisory Group and in many other ways aided materially in the conduct of the survey and the preparation of the Report. It should

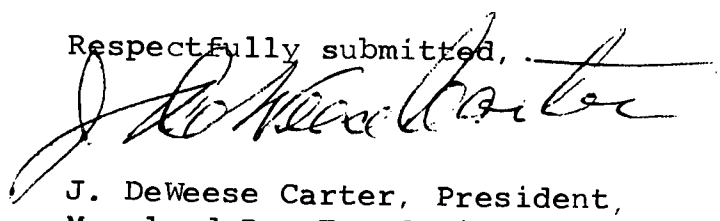
also be noted that the Supreme Bench has already put into effect some of the recommendations of the Report and other recommendations are now being studied and considered by both the Supreme Bench and the Municipal Court.

As the Report points out, it is by no means a complete survey of the administration of criminal justice in Baltimore City. Neither time nor available funds permitted an exhaustive study that would encompass every facet of the system as it now operates in Baltimore City. Both the prosecutorial and the defense functions need and must have an in-depth study and consideration far beyond the scope of this Report. The same is true of the functions of the Court Clerks and Sheriff which are so closely allied to the efficient operation of the courts. The even more important matter of the State's responsibility for the cost of operation of the judicial system also demands attention.

This Report is therefore but a first step. Nevertheless, it is hoped that it will point the way for the beginning of a meaningful reorganization of the criminal courts of Baltimore City so that criminal justice will be administered fairly and efficiently and thereby earn and retain the respect of the people who are dependent upon it for the preservation of their cherished liberties.

It is, therefore, of the utmost importance that the Report be carefully studied by the Bench and the Bar and that steps be taken immediately to implement the recommendations of the Report which we firmly believe will go far toward eliminating the conditions which now prevent speedy and efficient trials in our criminal courts. To that end, we urge the appointment of a joint committee of judges and lawyers to recommend rules and procedures to accomplish those changes which can be effectuated by rule of Court or order and to draft legislation to accomplish those changes for which statutory authorization may be desirable. As will be noted, copies of this Report are being submitted to The Honorable William S. James, President of the Senate, and The Honorable Thomas Hunter Lowe, Speaker of the House of Delegates.

Respectfully submitted,



J. DeWeese Carter, President,
Maryland Bar Foundation, Inc.

cc: Hon. William S. James
Hon. Thomas Hunter Lowe

REPORT ON THE ADMINISTRATION OF CRIMINAL JUSTICE IN BALTIMORE CITY

A Study of Criminal Courts and Related Agencies

January 1971

January 30, 1971

Mr. H. Vernon Eney, Chairman
The Fellows of the Maryland Bar Foundation
One South Calvert Building
Baltimore, Maryland 21202

Dear Mr. Eney:

We are pleased to submit to the Maryland Bar Foundation this final Report entitled:

REPORT ON THE ADMINISTRATION OF CRIMINAL JUSTICE IN BALTIMORE CITY;
A Study of Criminal Courts and Related Agencies
January 1971

The Report describes current management problems in the Baltimore City Criminal Justice System, and more particularly, those of the courts--the central agencies in the criminal caseflow process. The Report offers programs to improve criminal calendar management, to reorganize and improve judicial services, to provide legal and social services in the courts, and to improve financing of the courts and related agencies. Many solutions offered in this Report are the joint product of interaction among members of the Maryland Bar Foundation who guided the study, the Advisory Committee, Baltimore City Judges, the State's Attorney, and many others, including our staff.

As this Report is submitted, several agencies in the criminal justice system are experimenting with innovative techniques based, in part, on the suggestions made in this Report. We hope that these innovations will be encouraged--with financial as well as other support.

However, much remains to be done. Hopefully, this Report will provide a better understanding of current problems and how they may be dealt with most effectively.

This Report is designed to be used for a number of years. Thus, it is not merely a summary of study findings and recommendations; it is a long-term guideline for the development of improved court administration. For example, the suggestions for calendar management are basic long-range guidelines for the development of a better court management system. While some implementation of the recommendations has begun, the process of achieving long-term improvement will require many months of sustained effort. We hope that this Report will become an actively-used, working document for the improvement of the administration of justice in Baltimore City.

We wish to express our deep appreciation to the Maryland Bar Foundation, as well as to the Governor's Commission on Law Enforcement and the Administration of Justice, to the City of Baltimore, and to all of those whose cooperation was needed to obtain information and to review findings and conclusions. Recognition of individual effort is provided in the acknowledgement section of this Report. The responsibility for views and recommendations expressed in this Report as well as for errors and omissions is ours.

The basic goal of this effort has been to improve the administration of criminal justice in Baltimore City. This Report, if effectively used, will help to achieve that goal more fully.

Sincerely yours,

David J. Saari,
Director

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Part I: Introduction

A. Background of Study

1. Origin

In April 1970, the Maryland Bar Foundation engaged Court Management Systems to begin a management study of the administration of justice in Maryland. Although studies of the Maryland judicial system had been undertaken in the past, the findings of some of these studies had never been sufficiently implemented to change the practical operations of the judicial system. Thus, the broad study, as envisioned by the Maryland Bar Foundation, was to be not merely an historical survey or a generalization of judicial problems, but rather, a systematic analysis of the judicial process to identify problems, to develop concrete recommendations and to assist in their immediate implementation where feasible.

This report is of the first phase of the study. It focuses on the Criminal Division of the Municipal Court and Criminal Court of the Supreme Bench and related judicial agencies in Baltimore City. As part of this first phase, the Maryland Bar Foundation and the Governor's Commission on Law Enforcement and Administration of Justice coordinated initial planning for the survey. The results of this study effort from April 1970 through January 1971 are found in this report which is now submitted to the Maryland Bar Foundation.

2. Funding

Funds for the study were provided by a substantial private contribution from the Maryland Bar Foundation, by a grant from the Law Enforcement Assistance Administration of the Department of Justice (L.E.A.A.) and by a grant from the Governor's Commission on Law Enforcement and Administration of Justice. Study facilities and office equipment were made available for a temporary period by the Mayor of Baltimore City.

3. Direction of the Study

The study effort has been directed by David J. Saari, an attorney and Director of Court Management Systems. He has been assisted by a team of legal specialists with extensive experience and expertise in the field of judicial administration and management.

The project has been subject to the operational control of a Maryland Bar Foundation Steering Committee, chaired by Mr. H. Vernon Eney, and composed of leading members of the Maryland bar. Permission to conduct the study was obtained from Chief Judge Hall Hammond of the Maryland Court of Appeals, who exercises, by virtue of his position, overall administrative authority over the Maryland judiciary. Chief Judge Hammond designated the Administrator of the Maryland Courts, Mr. Frederick W. Invernizzi, to serve as the Project Administrator for the study. Mr. Richard C. Wertz, Director of the Governor's

Commission on Law Enforcement and Administration of Justice has provided maximum cooperation and support in reviewing the progress of the study. In addition, the Advisory Committee, whose membership is described later in this part, provided valuable advice during the course of the study.

B. Purpose of the Study

As stated in the Project Proposal, the goal of Phase I of the project effort has been to identify problems, to establish practical solutions and to implement individual management improvement plans in the administration of criminal justice in the Baltimore City courts. Such an overall management evaluation is designed to assure the citizens of Maryland the basic requirements for fair and prompt judicial process.

To achieve this objective, the judicial administrative agencies of Baltimore City were studied in detail from various perspectives -- operational practices, utilization of manpower and resources, financial policies, information systems, and administrative management and control of the judicial process. In this evaluation, methods were sought to reduce case backlog and undue delays, to provide for adequate defense at all stages of the criminal process, to make available effective social, medical and rehabilitative facilities to those seeking such services, to develop adequate and effective court management reporting systems, and to modernize the

administration of justice by applying the advanced capabilities of data processing and communication.

During the course of the study, numerous developments have occurred which affect not only the present administration of justice in Baltimore City but also the future of judicial reform in Maryland. Personnel changes in the State's Attorney's Office, the U.S. Supreme Court requirement for provision of defense counsel at preliminary hearings (Coleman vs Alabama), the recently passed District Court Amendment to the State Constitution, public concern over Traffic Court practices, the criminal indictment of key Municipal Court officials, the increased availability of federal and local funds for law enforcement programs -- these developments have had significant bearing on the study and on planning for an effective program for administering justice. The public attention recently focused on the courts as well as the desire to streamline and expedite the judicial process indicates that the time is ripe for a forward-looking analysis and appraisal of current practices and future needs. The report offers both a look back and a future plan for the criminal justice system in Baltimore City.

The examination of felony and misdemeanor caseflow in Baltimore City has led to the ultimate conclusion that the institutional roles of the courts and all other agencies involved in handling felony and misdemeanor cases needs to be rethought, and that a completely changed perspective

on what they are doing for and to the public is absolutely vital. This means of necessity that the study and resulting recommendations can not be merely a "cookbook"--a "how-to-do-it" manual--which the Chief Judge, the State's Attorney and others may immediately follow and thereby produce a better brand of justice. Many decisions must be made before following any recipe. It is to these "pre-recipe" issues and problems that this report is addressed and their full implications must be understood.

Our charter from the Maryland Bar Foundation was to examine the fundamental problems and, in response, to produce recommendations of a fundamental nature. The direction we have received, as well as our own study, suggest that mere tinkering with judicial machinery is neither desirable nor satisfactory. An ephemeral solution is not the goal; a lasting one is. Our study of the courts was conducted on these premises.

In planning a management study of this nature, several basic factors have been kept in mind.

First: the complexity of the subject matter. Nothing is simple about following the intricate details of felony and misdemeanor caseflow processing from arrest through disposition. There may be ten to twenty people in a dozen or more offices who are intricately involved in the process of each of thousands of cases.

Second: comprehensiveness. How broad was the scope of coverage intended in the study? This has been a broad study, not confined to one office, to one court, to one level of government or to one branch. It has included the private defense bar as well as public agencies.

Third: objectivity. Was a quantitative approach desirable? The answer to that is clear--factual data and first-hand observation were vital ingredients in the survey.

Fourth: the significance of the study. The study is considered of major importance from every aspect. The funds spent, the personnel employed, the expertise used and the subject itself are all pointing to its significance. Moreover, in view of the rapid case backlog growth, the study is of strategic significance to the maintenance of justice, law and order--not merely designed as a tactical temporary maneuver.

Unlike many studies, this study was to be conducted publicly, subject to public review and undertaken in the public interest--not simply as an aid to governmental officials. While the study results are summarized in a written report, many informal memoranda as well as numerous informal and formal meetings were held to discuss the problems and possible solutions. This study and Report represents a joint effort on the part of many individuals and groups. Any proposed recommendations

can not be implemented overnight. The complex nature of the problems defies "quickie solutions" or "gimmicks". There is no equipment -- whether it is a computer or a communication system - which will solve the basic problems confronting the Baltimore City criminal justice system, although, to be sure, they may be of assistance if intelligently utilized. Thus, implementation of the recommendations can not be an easy task nor is it considered a short-run activity. The problems are of long-standing duration; the roots of some go back a decade or more. No less than a two to four year effort will be required in considering the recommendations in this report.

Finally, there was an obvious requirement that recommendations be rational but responsive to political realities, that they be documented, that they be persuasively presented, that they allow for flexibility in working with them and that they not be excessive in cost of tax dollars. Economical solutions were sought. The host of factors in the study pointed to an ultimate product which would be realistic, useful and timely. We believe the Report offered to the Maryland Bar Foundation is responsive to these requirements and represents the best composite survey that could be conducted in view of the existing limitations of time and resources.

This Report will be most useful if it is considered as a basic planning document which can point the way to the solution of many of the fundamental problems which have plagued the criminal justice system in Baltimore.

C. Scope of Study

The scope of the study encompassed:

The Police - Their arrest activity, court activity and deployment in relation to the courts.

The Municipal Court - The operations of the Criminal Division spread out across the city in nine locations.

The Grand Jury - Its role in the caseflow of serious criminal charges.

The State's Attorney - How the State's Attorney interrelates with other agencies in the Criminal Justice System, his relationship with the Criminal Court of the Supreme Bench in moving criminal cases and appeals.

The Criminal Court of the Supreme Bench - The procedures and practices in control of managing the criminal caseflow processes, pre-trial release and appointment of defense counsel.

The Criminal Court Clerk - How the office contributes to the control calendar management of criminal cases.

The Jail - Baltimore City - The knowledge of how prisoners are detained, and how pre-trial release works.

The City of Baltimore - Its financial role in the courts.

The Sheriff - How the office supports the courts.

In all there are several hundred positions involved in these offices.

Obviously, as information was gathered and problems were clarified, this broad focus gradually narrowed to concentrate upon the major areas described in this report.

D. Study Methods

The study methods included substantial personal interviews of all levels of officials in the courts and related agencies, private bar members and others in contact with the courts. In some cases repeated interviews were needed to obtain a comprehensive understanding of their roles. In addition, there were detailed analyses of operations, extensive fact-gathering efforts, particularly in the preparation of a benchmark inventory which will be described later in this report.

Coupled with interviews, operational analyses and detailed fact-gathering, the methodology employed here included a review of all prior studies of the criminal justice system (see the bibliography attached), a review of all available statistical data describing various parts of the courts and related agencies, as well as an extensive study of legal procedures, court rules, statutes, and case law. In addition, the need for financial information required extensive unique data gathering from state officials. Thus, the traditional methods of analysis were joined to produce the broadest possible insight into current operations.

E. Precedent of Prior Studies

Considerable historical precedent exists for the study of the Baltimore courts and ancillary related offices. We have carefully reviewed previous reports and have taken them into consideration in this management analysis. In general, these past studies have surveyed a part of the judicial process but never the total administration of justice in the City. Consequently, the findings and recommendations of prior reports rarely take into account the interrelationship and interdependency of judicial agencies and the effect of change in one upon another.

Nevertheless, the volume and variety of studies of the Baltimore City criminal justice system are indicative of the felt concerns of the community. Moreover, all of these studies have called for change and improvement in the existing system of justice. While implementation details for such proposed improvement is singularly lacking, these studies have nevertheless frequently isolated real and pressing problems.

More specifically, we note a consistent call for the following broad reforms:

(1) increased state coordination and unification of judicial activities and facilities,

(2) centralization of court jurisdiction and administration,

(3) simplification of judicial procedures with clearer guidelines

and stricter enforcement of court rules,

(4) increased court control over the judicial process,

(5) removal of judicial officials from partisan politics,

(6) better service at lower court levels, and

(7) the need for greater dignity in all phases of the judicial process.

Numerous and varied methods have been suggested for achieving the above reforms. These include increased personnel, additional space, more judges, more State's Attorneys, reorganization of administrative structures, standardization of judicial records, better training for judicial personnel, etc. Many of these suggestions are valuable and enlightened, yet they cannot be realized without a concrete means for their attainment. We have, therefore, realistically re-appraised long-felt problems and proposed solutions while examining judicial administration as it is presently practiced in Baltimore.

With reference to the police, the study has been limited to that area which directly relates to court activity: arrests (particularly by districts) and their effect on court planning; charging practices and offense categories and their relation to the categories used in the criminal courts; and the utilization of police manpower for court functions -- i.e., docketing and scheduling as they affect police court appearances as witnesses.

Record-keeping and the need for an effective system for information retrieval for management purposes have also received considerable attention. Indeed, recommendations of several prior studies suggest a sophisticated understanding of the need for focusing responsibility for an orderly flow of information. In one report, for example, an information system was proposed which would allow some analysis of the "criminal defendant", his age, past record, education, employment and the possible relationships of his home (location) to the crime and of the defendant to the victim. This report provides detailed implementation suggestions for the improvement of court information processing for management purposes.

A few past groups studied in detail the area of criminal case assignment. Most urged the removal of this function from the State's Attorney's Office. While this has since been accomplished by legislation in 1970, we submit detailed recommendations for the management and policies of the new Criminal Assignment Office based on considerable statistical support appended to this report. Similarly, the perplexing financial situation of the Municipal Court and the Baltimore City Criminal Court has received considerable recognition. We have provided detailed analysis and justification for proposed state financing of the courts.

In many instances, this report and recommendations supercede these previous findings. For example, in the area of Municipal Court activity, prior operational recommendations for the State's Attorney's

office have been surpassed by the overall planning for the Municipal Court and for the development of area courts for the trial of misdemeanors and centralization of preliminary hearings. Likewise, while previously proposed drug programs and educational efforts go beyond our expertise, we have studied the trial of criminal cases and the judicial problems posed by such cases. Insofar as many of the criminal cases are drug offense cases, our broad planning for the provision of community service workers should provide some assistance in this area. The provision of such social-rehabilitation facilities in these courts stems from the need for the court to assume an active role as a referral agency, to relate itself to the community and to make maximum utilization of community programs and facilities.

One area receiving little prior attention is the Criminal Division of the Municipal Court. To this division we devoted a great deal of effort. In it we find serious needs -- beyond merely the oft-repeated call for enlarged physical and personnel support. The areas of vital importance -- screening, clarification of the power of judges to eliminate cases at the preliminary hearing stage, the relationship of the Municipal Court to the Supreme Bench, the development of a method for adequate handling of case scheduling, a solution to the serious problem of appointment of counsel, assignment and postponements, pre-trial release, record-keeping and reporters, social and medical services -- have gone previously unrecognized. These problems, however , loom large to us.

In short, numerous studies have been made of the administration of justice in Baltimore City and recommendations have been proposed. However, we have found these reports to be deficient in two major respects: provision for implementation and recognition of the effect of the interdependency of one judicial agency upon others in the total judicial administrative process.

Mindful of these past efforts and concerns, therefore, we have undertaken the present management study. We have analyzed the current procedures and policies in the administration of justice in Baltimore as reflected in the everyday routine of court activity. Our recommendations are not only specific and accompanied by implementation instruction wherever possible, but are made in the light of the total judicial process and the interdependency of all agencies involved.

Whenever possible, the recommendations are aimed at the exercise of current powers of existing officials within current resources. When this has been impractical, we have attempted to delineate with sufficient precision, the legal, financial or other changes required to bring about needed improvements. The proposals are presented in the light of the current system so that they may have immediate effect with a minimum of preliminary political, financial or statutory action.

F. Project Staff and Related Groups

The Project's professional staff participated in all phases of the Management Study. Findings and recommendations in this report are therefore a product of combined thinking, experience and analysis. However, individual members of the study team were also responsible for specific areas of the Project Study. Their major areas of involvement are as follows:

David J. Saari - Director of the Study

Stevens H. Clarke - Data Collection and Information Systems; Pre-Trial Release; Editor of Report

Col. J.F. Lieblich - Calendar Management and the Supreme Bench

Mrs. Margaret P. Kostritsky - Financial Organization and Planning

Mrs. Caroline Cooper - Research, Editorial and Project Coordination

Mrs. Beatrice Levi - Court-Community Relations

In addition to our full-time professional staff, the following assisted in collecting data from open cases in the Supreme Bench:

Julien Hecht, Supervisor

William Fitzpatrick

Juliet Kostritsky

Alice Levi

Marianne Morton

William Mueller

Phyllis Orrick

Lisa Reichenbach

Julian Wilson

Credit is also due to secretarial assistance from Mrs. Charlene Zellmer, and others on our staff.

The following members of the Maryland Bar Foundation served on the Foundation Steering Committee. In this capacity they provided critical analysis and guidance during the consulting effort.

H. Vernon Eney, Esq., Chairman

Hon. J. DeWeese Carter, Vice-Chairman

C. Keating Bowie, Esq.

Robert E. Coughlan, Jr., Esq.

George Cochran Doub, Esq.

Eli Frank, Jr., Esq.

W. Lee Harrison, Esq.

Robert C. Heeney, Esq.

Benjamin C. Howard, Esq.

Charles Mindel, Esq.

W. Hamilton Whiteford, Esq.

We received considerable additional support from the Advisory Group established for the Study Project. This group was specifically established for this court study and was composed of attorneys, judges and law enforcement officers. Those serving on the Advisory Group were:

Hon. J. Dudley Digges, Associate Judge
Court of Appeals of Maryland

Hon. Robert C. Murphy, Chief Judge
Court of Special Appeals of Maryland

Hon. Dulany Foster, Chief Judge
Supreme Bench of Baltimore City

Hon. I. Sewell Lamdin, Chief Judge
Municipal Court of Baltimore City

Hon. Frederick W. Brune, Former Chief Judge
Court of Appeals of Maryland

Hon. Charles E. Moylan, Jr., Former State's Attorney of Baltimore City

Frederick W. Invernizzi, Esq., Director
Administrative Office of the Courts

Thomas P. MacCarthy, Esq., Administrator
Administrative Office of the Supreme Bench

Milton B. Allen, Esq., State's Attorney
City of Baltimore

Kenneth L. Johnson, Esq., Executive Director
Lawyer's Committee for Civil Rights under Law

John F. King, Esq.

Marvin J. Land, Esq., Chairman
Municipal Court Committee of Baltimore City

Alan H. Murrell, Esq.

Philip Heller Sachs, Esq., Chairman
Criminal Justice Commission, Inc.

Richard C. Wertz, Esq., Executive Director
Governor's Commission on Law Enforcement and
Administration of Justice

Joseph H. Young, Esq.

G. Acknowledgments

We gratefully acknowledge the special cooperation and assistance of the following individuals and their offices during the course of this study.

Municipal Court of Baltimore City: Chief Judge I. Sewell Lamdin and the judges of his court; Edward Starkloff, Chief Clerk and his staff; John Kolarik, Clerk of the Criminal Division and his staff.

Supreme Bench of Baltimore City: Chief Judge Dulany Foster, and the judges of the Criminal Court; Thomas MacCarthy, Administrator of the Supreme Bench and his staff; Lawrence Mooney, Clerk of the Criminal Court; George Brown, Deputy Clerk, and Carl Martin of the Criminal Court; Richard Motsay, Director of the Pre-trial Release Division and his staff; Charles Merit, Fiscal Officer for the Supreme Bench; Mrs. Madeleine Blair, State's Attorney's Representative in the Department of Domestic Relations and Don McNeil, Chief Analyst for the Department of Domestic Relations; and John Patterson, Chief Clerk of the Juvenile Division.

State's Attorney's Office of Baltimore City: Hon. Milton Allen, State's Attorney; Judge Charles Moylan and Hon. Howard Cardin,

former State's Attorneys; Stephen Montanarelli, Chief of the Administrative Division; Mrs. Ernestine Karukas, Acting Assignment Commissioner; John Karukas, Chief Docket Clerk; Joseph Koutz, Chief of the Pre-Trial Division; John de Kowzan, formerly of the Grand Jury Division; Mrs. Marlene Folio of the Indictment Section.

Department of Finance, City of Baltimore: Mrs. Janet Hoffman and Joseph Baumgartner.

Baltimore City Police: Dr. Franklin G. Ashburn and Sgt. John E. Grams of the Planning and Research Division; Col. William Armstrong of the Traffic Division; Deputy Commissioner Ralph Murdy of the Administration Bureau; Major Maurice Guerrasio of the Central Records Office; and Major Donald T. Shanahan, Area Commander of Area 3.

Baltimore City Jail: Warden Hiram Schofield, Mrs. Vera Schell, and Miss Peggy Roberts.

Office of Sheriff: Sheriff Frank J. Pelz and Chief Deputy Sheriff Richard Reitz.

Legal Aid Agency: Joseph Matera and Stephen Harris.

Office of the Mayor: Kalman Hettleman and Peter Marudas.

Office of the City Solicitor: Hon. George Russell.

In addition, we wish to thank the many members of the private bar as well as numerous other individuals who gave freely of their time and generously shared their knowledge and experience with us. We hope that their cooperation will be fully recognized by the community.

PART II: SUMMARY OF RECOMMENDATIONS

II. Summary of Recommendations

As a guide to the Report, the recommendations are summarized here.

The order of recommendation follows the text of the Report.

CALENDAR MANAGEMENT IN THE CRIMINAL COURT OF THE SUPREME BENCH, BALTIMORE CITY (PART IV)

1. Improvements are recommended in calendar management by the Supreme Bench Criminal Court as follows:

   a. Immediate action to initiate the Criminal Assignment Office (pp. IV-31 to IV-37).

   b. Adoption of general management policies by the Supreme Bench and Chief Judge relating to (1) appointment of a Criminal Assignment Judge with the (2) Chief Judge serving initially in this capacity; (3) time limits governing criminal calendar operations; (4) restrictive postponement and continuance policies; (5) case setting policies which maximize probability of prompt dispositions; (6) avoidance of specialization of Court Parts; and (7) consolidation of cases involving the same defendant before the same judge (see pp. IV-37 to IV-43 and Appendix A for additional detailed factual analyses).

   c. Adoption of calendar management guidelines to control case calendaring and assignment, notification, continuances, and to develop a useful information system for control purposes (pp. IV-43 to end of Part IV).

REORGANIZATION AND IMPROVEMENT OF JUDICIAL SERVICES IN THE CRIMINAL DIVISION OF MUNICIPAL COURT (PART V)

2. The following is recommended in the Criminal Division of the Municipal Court, and in the future Criminal Division of the new Baltimore City District Court:

   a. The adoption of a complete reorganization plan to improve overall service of the division (pp. V-11 to V-15 and Appendix A).

b. The centralization of preliminary hearings in one court in the Central District (pp. V-13 to V-15).

c. Improved management of the Criminal Division (p. V-16) and the use of a reporter for preliminary hearings (p. V-17).

A PROGRAM OF LEGAL AND SOCIAL SERVICES IN THE CRIMINAL COURT OF THE SUPREME BENCH (PART VI)

3. A program of organizational improvements is recommended to unify administratively at the state level those support services commonly employed in both the Municipal Court and the Supreme Bench by:

a. Appointment of an Administrative Office of the Eighth Judicial Circuit Court to administer certain common services such as pre-trial release and certain other services (pp. VI-13 et seq., p. VI-20); for costs, see "shared programs" in Part VII).

b. Improvement of pre-trial release programs and coordinated determination of counsel eligibility for indigents in both courts (pp. VI-18, 19, and procedures in Appendix B).

c. Addition of new in-court medical, social, and psychiatric referral services in Municipal Court (p. VI-19).

d. Improved screening of charges in Municipal Court by the State's Attorney (p. VI-17).

e. Improved defense counsel systems for indigents in Municipal Court and Criminal Court (p. VI-18 and details in Appendix C).

f. Transfer of criminal probation from the Supreme Bench to the state (pp. VI-13, 21).

A PROGRAM OF IMPROVED FINANCING OF MUNICIPAL COURT AND SUPREME BENCH (PART VII)

4. It is recommended that the State:

a. Assume a larger share of financing of criminal justice in Baltimore City (pp. VII 1-3).

b. Increase financial resources (in accord with Part VI) for new shared programs to the courts and related agencies (pp. VII-3 and tables).

c. Unify budgeting and planning for Baltimore City criminal justice system (pp. VII-4 et seq.).

UNFINISHED BUSINESS (PART VIII)

5. It is recommended that there be further study of the Municipal Court Traffic Division, the office of Sheriff, the office of Clerk of Criminal Court, and that a coordinated study of space utilization and planning for all courts be authorized (pp. VIII-1 to VIII-5).

PART III. PRINCIPLES OF CRIMINAL COURT STRUCTURE AND ADMINISTRATION

III. Principles of Criminal Court Structure and Administration

This study reflects a number of basic assumptions or principles which are apparent throughout, but which should be made explicit. These concepts are essential for improved court administration.

(1) THE COURTS SHOULD FOCUS ON TRULY ADJUDICATORY PROBLEMS: THE JUDGES' BURDEN OF OTHER MATTERS SHOULD BE REDUCED.

Formal adjudication is an expensive and delicate process; judges are specialists trained to apply it. This adjudicatory process tends to be submerged by a number of matters not really suitable for handling by a judge or outside the judge's area of competence. For example, many defendants brought before the criminal courts are not charged with major crimes but become involved in the criminal process essentially because of major medical and psychiatric problems. The resources of social service agencies should be made available to relieve the courts of the burdens of handling such defendants. The same is true of a large number of matters involving family disputes. Judges are also burdened by matters which are judicial in nature, but do not normally require a full-fledged judge: applications for arrest warrants, determination of a defendant's financial status for purposes of providing free defense counsel, and pre-trial release investigation. Normally, these matters should be handled by a sub-judicial officer such as the commissioners provided by the recent District Court Act (Chapter 528, Laws of Md. of 1970).

(2) COURT STRUCTURE AND MANAGEMENT SHOULD BE UNIFIED.

The state court structure should be unified with central management responsibility lodged in the highest court. No individual or court should be autonomous.

In Baltimore City, the lack of a unified court structure results in considerable fragmentation. There are two independent criminal courts--Criminal Court (of the Supreme Bench) and the Municipal Court (future Criminal and Traffic Divisions of the Maryland District Court). In effect, each court has its own administrative and ancillary agencies. Thus, there are two chief judges, two personnel and financing systems, two administrators and two systems for special court services involved in Baltimore City's criminal justice system. The resulting management system involves a considerable duplication of function and a notable lack of a central focus of responsibility.*

The lack of unification in Baltimore City's Courts is repeated in the state as a whole. There will be separate--but internally unified--state court structures: the Circuit Court and the District Court, unified only by a common chief overseer, the Chief Judge of the Maryland Court of Appeals.

The national trend is toward greater centralization of court structure. The State of Colorado, for example, has launched a major court centralization program with direct administrative authority placed in the Chief Justice and the Supreme Court. With minor variations, the principal characteristics

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*The Bond Commission in 1942, the Burke Commission, 1953, the Constitutional Revision Commission and others have pointed to the need for more unity of structure and management.

of this reorganization have been the following:

- o A unified court structure with all courts part of the state system and a simplified trial court structure which eliminates overlapping jurisdictions and integrates minor courts.

- o Constitutional authority and responsibility for administering the judicial system vested in the Chief Justice and the Supreme Court.

- o Appointment and rule-making authority vested in the Chief Justice and the Supreme Court.

- o State funding administered by the judicial branch, including budget preparation, with no executive veto or budget reduction.

- o A separate judicial personnel system administered by the judicial branch for all non-judicial personnel.

- o Constitutional provision for a state judicial administrator responsible to and appointed by the Chief Justice of the Supreme Court. The state administrator should have an adequate professional and clerical support staff.

- o Provision for judicial selection, tenure and removal based on merit rather than partisan election.

Such centralization, of course, has not been quick or easy. It has required thirteen years, two constitutional amendments, considerable implementing legislation, and considerable adaptation. However, we strongly suggest that such centralization efforts in Baltimore City be begun as soon as possible. Until the existing fragmentation is reduced, many of the problems facing Baltimore City's criminal courts will remain.

(3) COURT SUPPORTING SERVICE SHOULD BE UNIFIED.

Support services for all courts should be unified into a single agency. Proliferation of agencies serving the judicial branch should be avoided.

In Baltimore City these services are fragmented. Elsewhere in this

Report recommendations are offered to unify the existing state and local service agencies. Such unification will provide a focus of responsibility and will increase public awareness and access to available judicial services.

(4) THERE SHOULD BE EARLY FINALITY IN COURTS OF FIRST JURISDICTION

The courts of first jurisdiction--which are, in Maryland, known as "the courts of limited jurisdiction"--should make a lasting decision in the first instance. Court visits by witnesses, police, lawyers, and others should not need to be repeated and each appearance should be maximized to produce finality. The present de novo appeal system and other sieve mechanisms are not conducive to finality. In fact, in 1970, 3,200 cases were appealed from Municipal Court, requiring a new trial at the Criminal Court level.

Early finality, of course, requires public confidence in the court of first jurisdiction. Other sections of this Report propose numerous improvements in Baltimore City's Municipal Court, which, if implemented, should bolster public confidence. Specific recommendations are offered which implement this concept of early finality such as early (post-arrest) prosecutorial screening of cases and reduction of de novo appeals to the lowest practicable level.

(5) CASE CALENDARING AND ASSIGNMENT SHOULD BE COURT CONTROLLED

The responsibility for calendar creation and control should be lodged in the court itself. It is vitally important that the court direct and coordinate the daily operations of the case calendar management processes. This is not

the case in Baltimore City.

The necessity for court control of calendar operations has been well recognized by leaders in court reform.* In a later section of this Report, we offer specific recommendations for achieving such control and describe its impact on the police, sheriff, prosecutor, clerks, court employees, bar and others involved in court operations.

(6) THE COURT SHOULD ENFORCE THE RIGHT TO A SPEEDY TRIAL

The court must set a time standard regarding disposition of cases. Under no circumstances must an individual be allowed to serve his own interests by delay.

No time standard presently exists in the courts of Baltimore City. We recommend such a standard in Part IV of this Report.

(7) COURTS SHOULD MAKE USE OF MODERN MANAGEMENT TECHNIQUES

Modern management techniques should be applied to judicial operations, with the aim of controlling and coordinating the increasing complexity of court administration. Where possible, automated information systems should be introduced to provide current and quantified information regarding the court's daily operations. Such techniques are used infrequently in Baltimore City and no coordinated information system exists. We recommend a plan to implement this concept.

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*For a discussion of court control of calendar operations, see Court Management Study, Part I, Summary, Committee on the District of Columbia, U.S. Senate, May 1970. U.S. Government Printing Office; The Prosecutor and the Defense Function, ABA Project on Standards of Criminal Justice, March 1970; Chapter 330, Maryland Laws of 1970.

PART IV: CALENDAR MANAGEMENT IN THE CRIMINAL COURT OF BALTIMORE CITY

Outline of Part IV

Part IV: Calendar Management in the Criminal Court of Baltimore City

This part consists of four sections: a summary of findings, an analysis of caseflow trends over the last decade, an analysis of Criminal Court calendar operations in the last fifteen months, and recommendations for improvement of Criminal Court calendar management and related information systems.

A. Summary of Findings

To briefly summarize the analyses of available data in Sections B and C below, it can be said that the Criminal Court faces a major challenge in calendaring at the present time. Indictments per year, which increased only by 1,500 in the period 1960-67, shot up by 3,000 in the period 1968-69, due, apparently, to an increase in arrests for serious crimes. In 1970, indictments filed were reduced by 2,600 from the level of the previous year (9,400 in 1969; 6,800 in 1970); this was due partly to a 1,000 drop in cases held for Grand Jury by Municipal Court and partly to a pre-indictment screening program instituted by the State's Attorney. The Criminal Court is still left with a backlog of about 6,000 -- nearly as large as a "normal" year's intake. Appeals per year have also soared, doubling during the period 1968-70; the present appeal backlog is about 2,000 and evidently still showing rapid growth.

It can further be said that, although some necessary steps have been taken to aid the Criminal Court, such as pre-indictment screening by the

prosecutor and substitution of criminal information for more time-consuming Grand Jury indictment wherever possible*, calendar management -- the art of scheduling cases for judicial action so as to maximize the probability of prompt disposition -- remains quite weak. This weakness is shown by the fact that, even after the takeover of the criminal assignment duty from the State's Attorney's Office by the Supreme Bench on July 1, 1970, the percentage of calendared indictments and appeals resulting in continuance or postponement continued at its high, pre-takeover level of about 44%. Although a statute (Chap. 330, Laws of Md. 1970) provides for a Criminal Assignment Commissioner and staff appointed by the Supreme Bench, no commissioner has yet been appointed, and no new Criminal Assignment Office staff has been hired despite the availability of funds for this purpose. The present Criminal Court calendar management process is still basically that which was inherited from the State's Attorney's Office in July 1970. It is characterized by uncoordinated case scheduling, an information system which is deficient in important respects, and an inefficient system of notification of necessary parties.

Finally, it can be said that the analysis herein, albeit chiefly concerned

* Informations - except in Desertion and Non-Support cases - were not used until January 1971, when the State's Attorney's practice included use of informations, rather than indictments, on all Criminal Court cases not involving a felony charge.

with the Criminal Court, has implications for the State's Attorney's Office. First, while the concept of prosecutorial screening to eliminate weak or trivial cases should be applauded, the present State's Attorney's pre-indictment screening program is too little too late. It is too little because it is restricted to serious (i.e. Criminal Court) cases and ignores the much larger class of criminal cases triable in Municipal Court (the future District Court). It is too late, because, rather than operating at the immediate post-arrest stage (as recommended by this Report - see Part VI), the present screening system operates only at the Criminal Court level. Thus, the parties to a "screened-out" case are forced to go to Municipal Court, then to Criminal Court, and then back to Municipal Court again for disposition. The Municipal Court is forced to handle the case twice. The second implication of the analysis herein for the State's Attorney's present screening program is that, although it appears to have eliminated about 2,600 indictments in 1970, it still has not affected the "washout rate" -- the percentage of indictments and appeals disposed by dismissal, not guilty confessed, nolle prosequi, etc., rather than by actual trial. The washout rate, which has been steadily climbing throughout the decade, finally reached a high of 54% in the latter half of 1970. Even subtracting 703 cases disposed of by stet and nolle prosequi in a "year-end clearance" on December 28, 1970, the washout rate for the last six months of 1970 is 42%, exactly what it was for the preceding eight months (Oct. 1969-May 1970).

B. Flow of Serious* Cases Over the Decade 1960-1970

A longitudinal analysis of serious caseflow since 1960 suggests that conditions characteristic from 1960 through 1967 underwent considerable change from 1968 through 1970. This decade of data is shown in the graphs below (pp. 10-19). To summarize:

1. Indictments per year. The gradual rise in indictments filed per year (Graph No. 3) of 1,500 in the seven years 1960-67, from slightly more than 5,000 cases to approximately 6,500 cases, was only the beginning of a problem of increased filing of indictments. In the years 1968-70, this problem was intensified by a 1,500 case rise in one year from 1967-1968, followed by another approximate 1,500 case rise from 1968-1969. Data for 1970, however, offers hope that the bulge of cases in 1968 and 1969 will be a temporary phenomenon. If a line is projected through the graph, 1970 is on a general trend line for the decade. This general trend is:

Year	Indictment Range
1960	5000-5500
1963	5500-6000
1965	6000-6500
1967	6000-6500
1970	6500-7000

This sudden increase in indictments can be attributed to a parallel increase in cases held for the Grand Jury in Municipal Court (Graph No. 2).

* In this context, "serious" simply means "beyond the trial jurisdiction of Municipal Court."

The latter cannot be the result of increased total adult arrests (Graph No.1), which were drifting down slightly at the time; the most likely cause is a larger percentage of police arrests involving serious charges. This, in turn, may have been caused by the increase in police resources, as measured by the Police Department budget and staff, or by increases in actual serious crime, or by an increased severity in police charging practices -- or all of these factors together. The practice of the State's Attorney's Office can be eliminated as a possible cause of the increased serious charges, because at the time of the increase (and even at present) the formal charge is determined mainly by the police, with little participation by the prosecutor (e.g., there still is no formal Municipal Court complaint prepared by the State's Attorney's Office). The number of indictments filed dropped from about 9,400 in 1969 to about 6,800 in 1970, due to the impact of the State's Attorney pre-indictment screening program; the drop in cases held for the Grand Jury * (from about 10,000 in calendar 1969 to about 9,000 in calendar 1970) is not enough to account for the 2,600 drop in indictments filed. Thus, indictments per year seem to be at a "normal" level again -- i.e. on the 1960-67 trend

* This drop is attributable to the presence of trial prosecuting attorneys and public defenders in Municipal Court during the latter half of 1970, and also to a slight drop in adult arrests (from 49,000 in 1969 to an estimated 46,000 in 1970) which probably reflects the raising of the juvenile age limit from 16 to 18 for Baltimore City.

line. However, the sudden increase in 1968-69 left the court with a substantial backlog of nearly 6,000 indictments (Graph 4) in the latter half of 1970.

2. Backlog of Indictments (See Graph 4)

The statistics on untried indictments accurately reflect the accelerating rate at which indictments have been filed each year. To deal with this rise of untried indictments (from about 1,700 in 1966 to almost 6,000 cases in 1970) this Report recommends both an intensified prosecutorial screening program--at the Municipal Court level rather than at the Criminal Court level, to avoid the waste inherent in a case going to the higher court only to be sent back, (see Part VI and Appendix A), and also a program of improvement of calendar management and related information systems (see Section D below).

3. Appeals per Year (See Graph 5)

The doubling of appeals per year during the period 1968-1970, from 1,600 to 3,200 is unprecedented. Evidently a basic dissatisfaction with Municipal Court has erupted with accelerating force. This dissatisfaction will make it difficult for Criminal Court to keep abreast of indictments. Already efforts have been made to screen these appeals but with a virtually unlimited appeal de novo right, there is little that can be done by the Supreme Bench Criminal Court if litigants and lawyers decide to appeal.

The conditions creating this surge of appeals will seriously affect the functioning of the State's Attorney and the Supreme Bench. Moreover, no relief is in sight. Legislation regarding the new District Court (which will absorb the Municipal Court in July 1971) will continue to authorize de novo appeals (see Chapter 528 of the Laws of Maryland 1970).

4. Backlog of Appeals (See Graph 6)

The unprecedented rise in the backlog of appeals is a reflection of the rapid rise in input of appeals to the higher court. The July 3, 1970 Benchmark Inventory (see subsection (8) below) revealed substantial aging of this backlog; 1,007 appeals filed in 1970; 728 appeals filed in 1969; 196 appeals filed in 1968 and prior years. Thus, 49% of the appeals in mid-1970 were seven months old or older. While efforts have been initiated in 1970 to attack this backlog, it is not clear in the reported data that any substantial benefits have resulted. If no action is taken during 1971, this backlog will undoubtedly continue to rise.

5. Number of Guilty Pleas (See Graph 7)

The drop in guilty pleas over the decade adds further pressure for more trial time by defendants. This trend line has been dropping while the absolute numbers of indictments has been climbing. Guilty plea trends reflect, in part, the basic changes in the criminal law resulting from U.S. Supreme Court decisions during the 1960's. However, in view of the improved screening of cases both pre- and post-indictment, the trend is not irreversible. Improvement in the guilty plea discussion process would be

helpful and will be discussed later in this chapter.

6. "Washout" of Criminal Cases - Supreme Bench (See Graph 8)

"Washout" refers to indictments which do not result in actual trial with conviction or acquittal. Such indictments are disposed by stet, dismissal, nolle prosequi, not guilty confessed, or probation before verdict. Graph 8 reflects this washout rate. The percentage relationship of "washed-out" cases with the total dispositions of all indictments reveals that the "chaff" in the system is large and growing larger. The washout rate rose from 18% in 1960 to 45% in 1970 -- more than doubling on a rapidly expanding disposition base.

7. Months from Filing to Disposition in the Supreme Bench Criminal Court for All Criminal Cases (See Graph9)

The overall process times for indictments has increased as has the number of indictments and the indictment backlog. Although the total number of jury trials each year was low (232 in 1968-69), the process time has risen from three months (1965-66) to over six months (1968-69). Dispositions other than jury trial (court trials and pleas, etc.) reveal a shorter processing time, but that, too, has risen from two months (1965-68) to over five months (1968-69).

8. Open Indictments and Appeals Pending on July 3, 1970 - "Benchmark Inventory" (See Graph 10)

The Benchmark Inventory is a "snapshot" at one point in time (July 3, 1970) of the pending cases in the Criminal Court Clerk's Office, and

provides a solid baseline of data against which the future performance of the prosecutor and courts can be measured accurately. It reveals a serious aging problem in pending indictments and appeals which is not likely to change rapidly unless intense pressure is directed by both the State's Attorney and the Supreme Bench to move particularly the older appeals and indictments*.

The reader is directed to Appendix A of this Report for a detailed description of the methods by which the benchmark data were extracted, organized and computed.

The benchmark data, described in detail in Appendix A, is fully machine-readable (on cards and magnetic tape) and for this reason would be useful in the analysis of the pending Criminal Court caseload. The data collection form used permits a number of case characteristics to be compared and associated; for example, it would be possible to relate age of cases to criminal charge, to presence or absence of counsel, or to jail/bail status, or to isolate the "hard-core" of aging, non-triable cases so that effort could be focused on them. The benchmark inventory data could also become, if properly updated, the basis of a calendar management information system of the type recommended in Section D(3) below.

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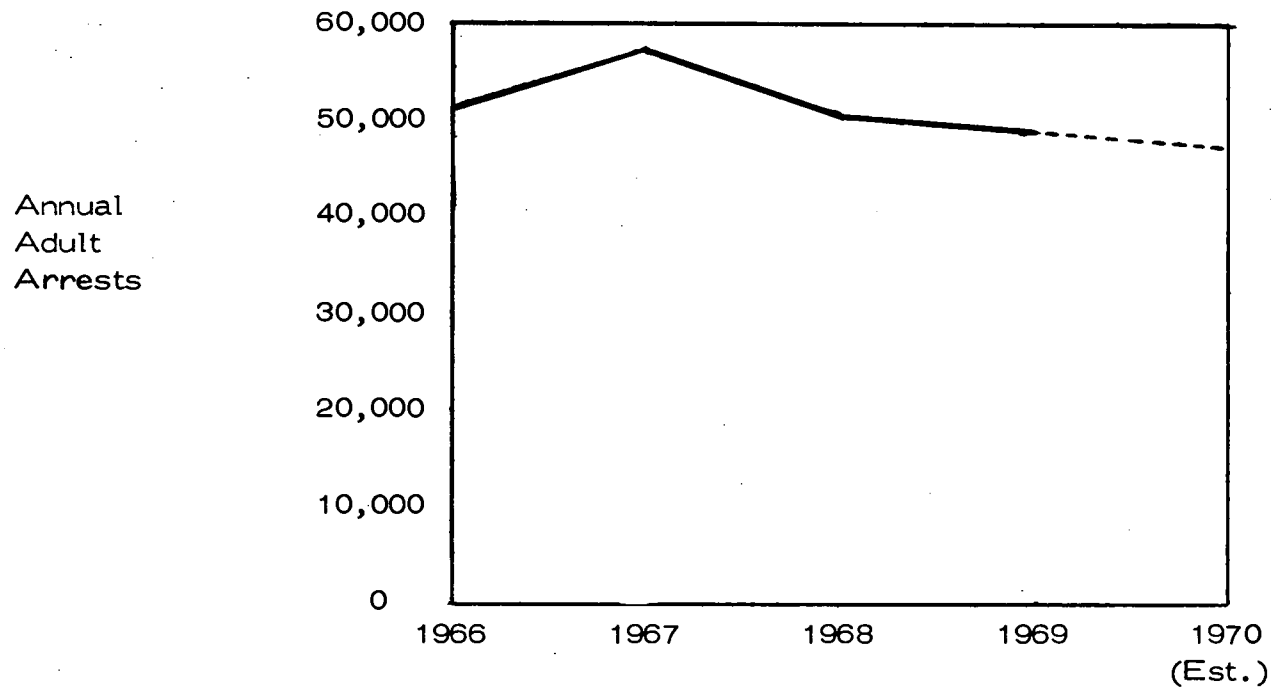
* The State's Attorney did, in fact, dispose of 703 cases - presumably older cases - in December, 1970;(see Section D(2) below)

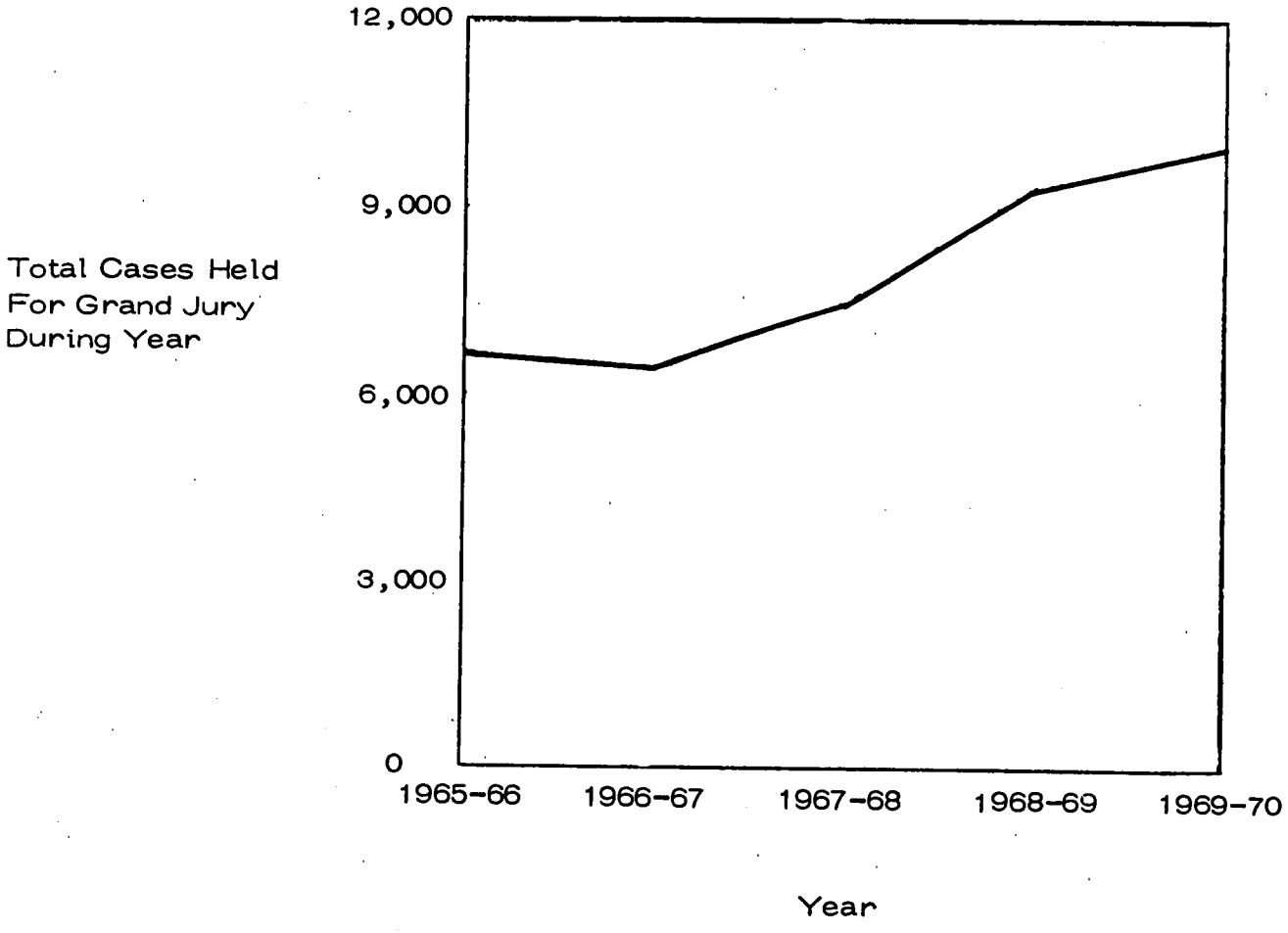
No. 1

ADULT ARRESTS
BY BALTIMORE CITY POLICE
1966-1969



No. 2

MUNICIPAL COURT CASES HELD FOR GRAND JURY: 1966-1970*

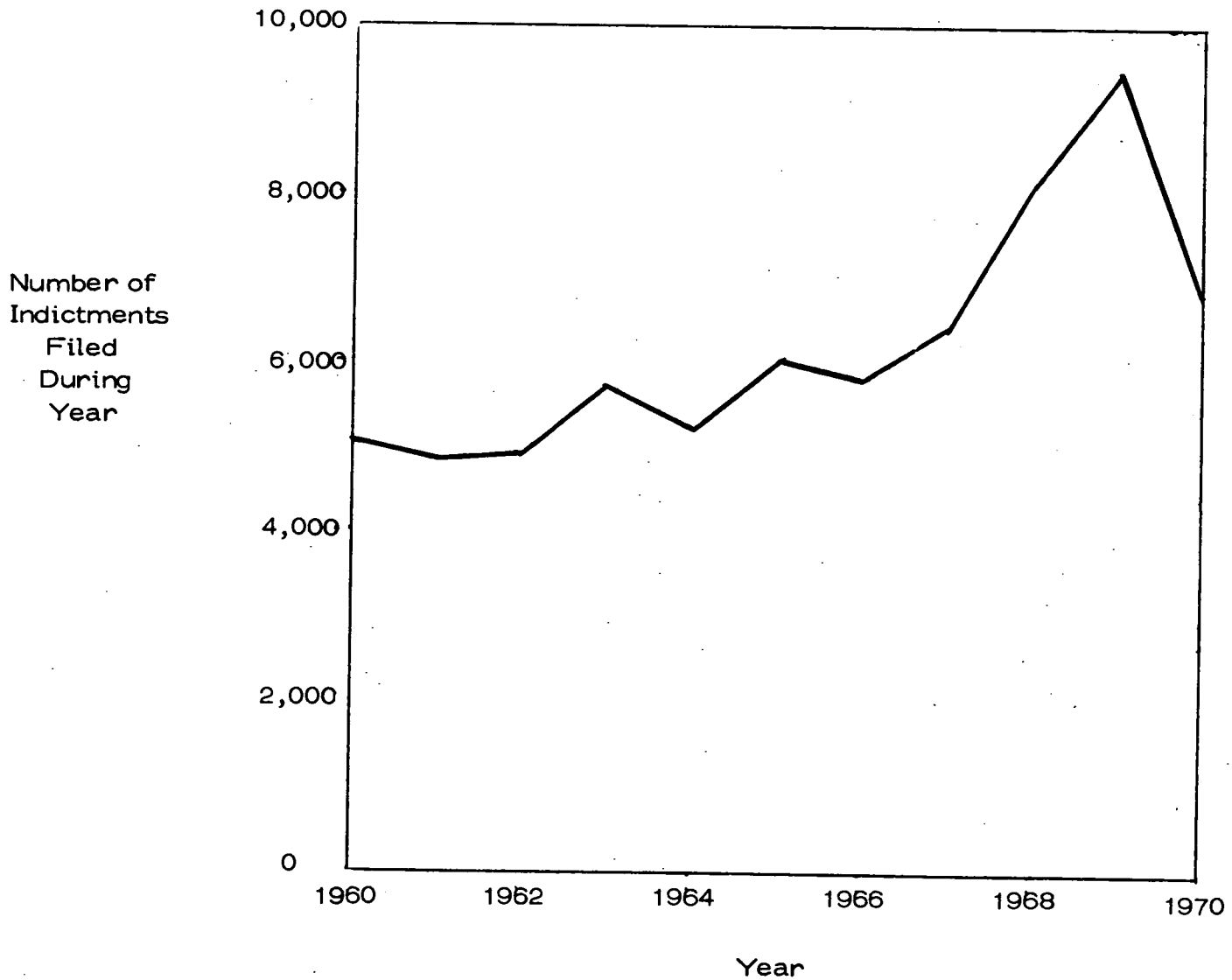


*Statistical Year. Adm. Office of Md. Courts, Sep. 1 - Aug. 31.

No. 3

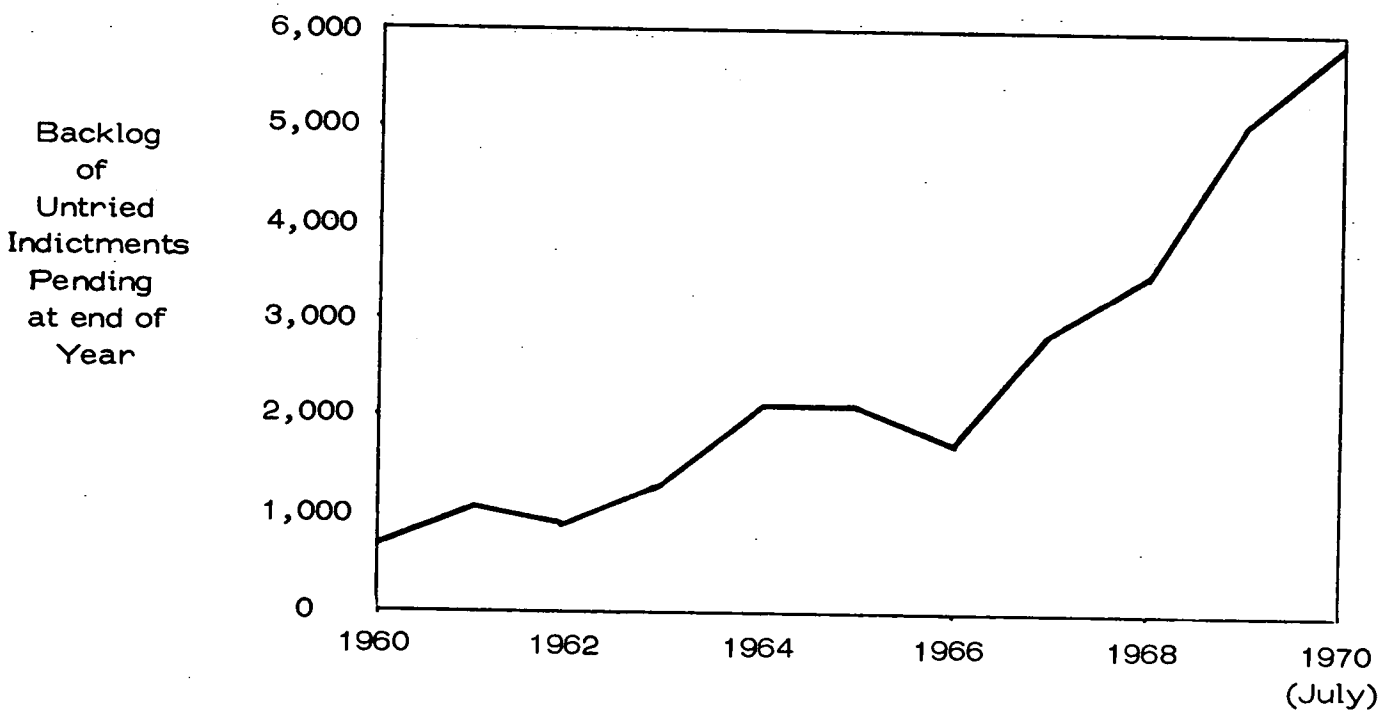
NEW INDICTMENTS BY THE GRAND JURY

1960-1970



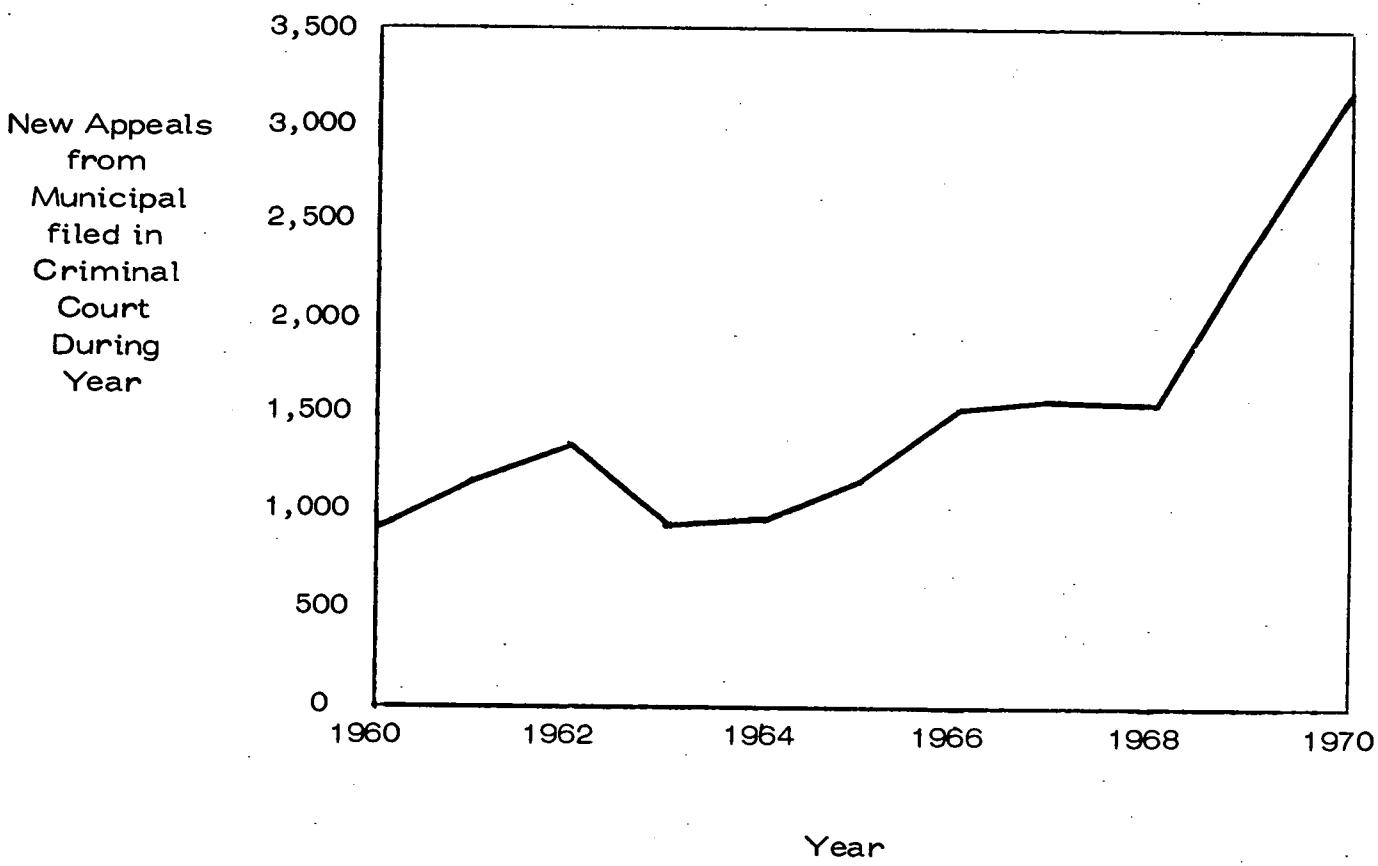
No. 4

CRIMINAL COURT AND STATE'S ATTORNEY
BACKLOG OF UNTRIED INDICTMENTS:
1960-1970



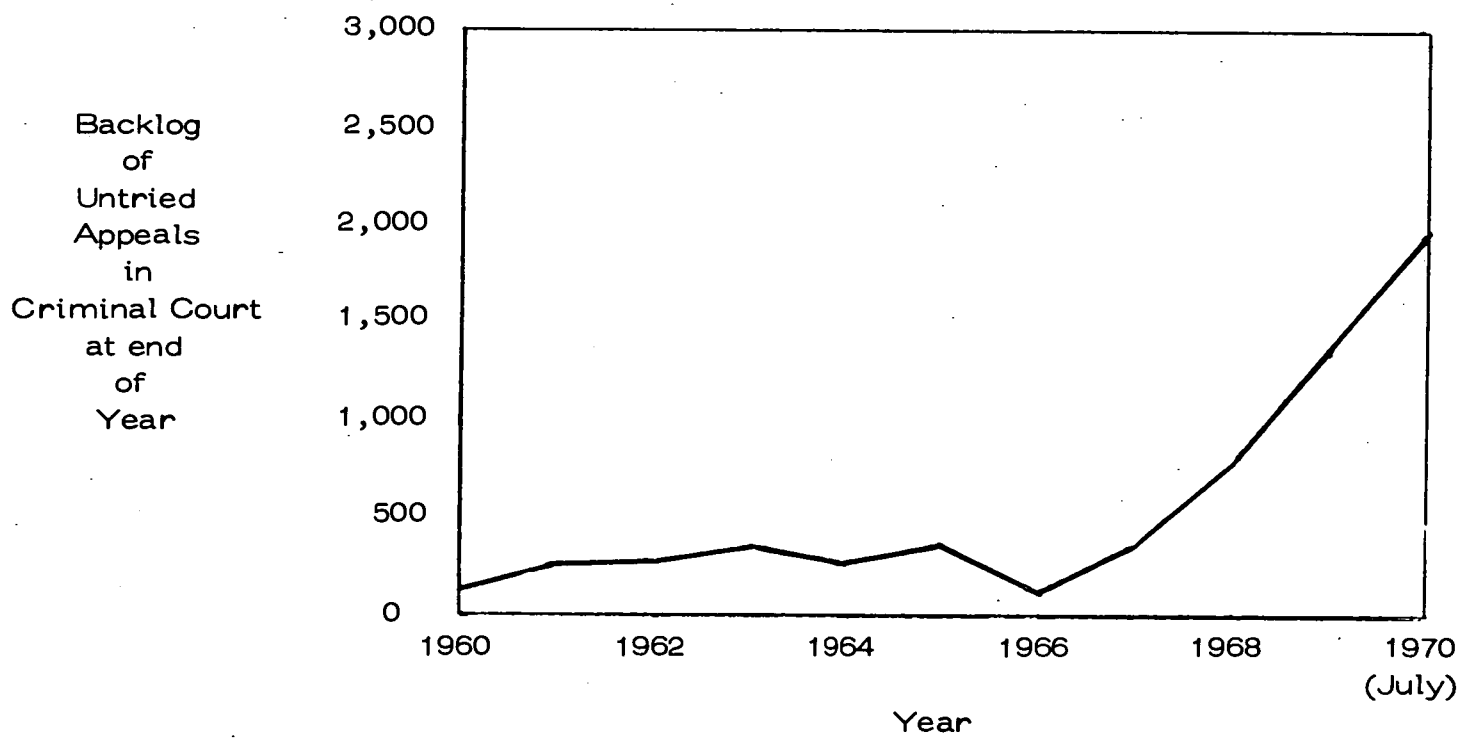
No. 5

NEW APPEALS FROM MUNICIPAL COURT FILED IN CRIMINAL COURT ANNUALLY: 1960-1970



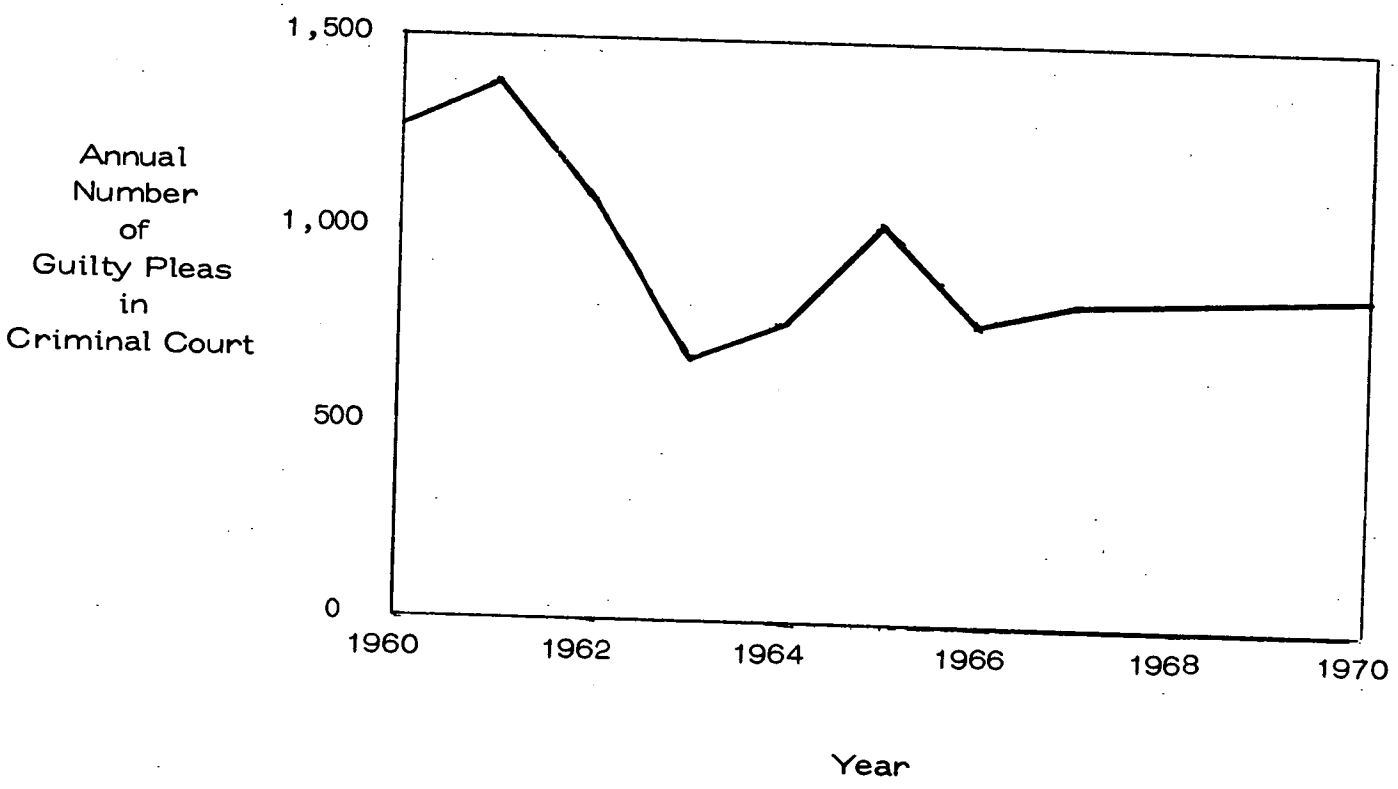
No. 6

BACKLOG OF UNTRIED APPEALS FROM MUNICIPAL IN CRIMINAL COURT: 1960-1970



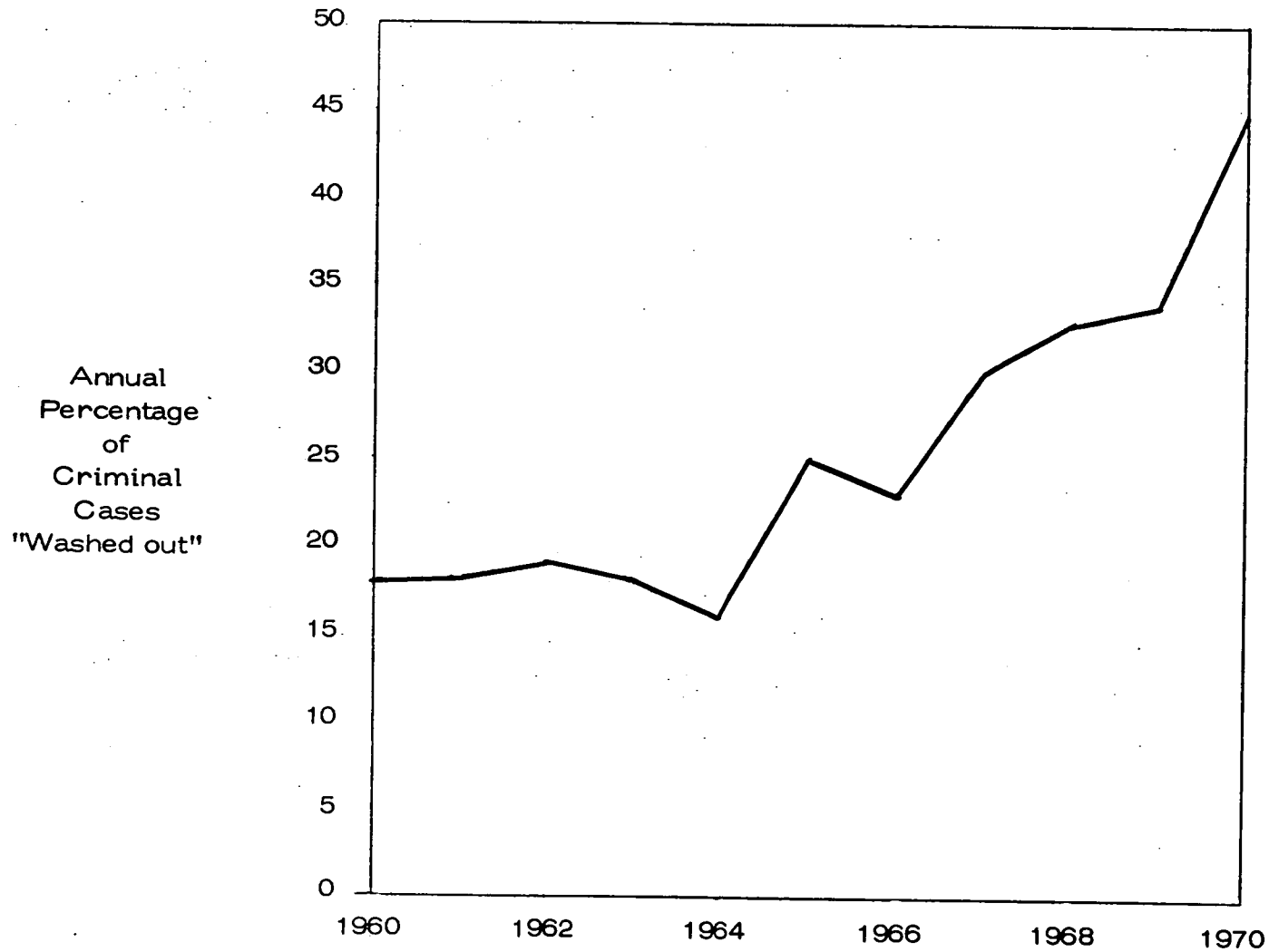
No. 7

ANNUAL NUMBER OF GUILTY PLEAS RECEIVED IN CRIMINAL COURT: 1960-1970



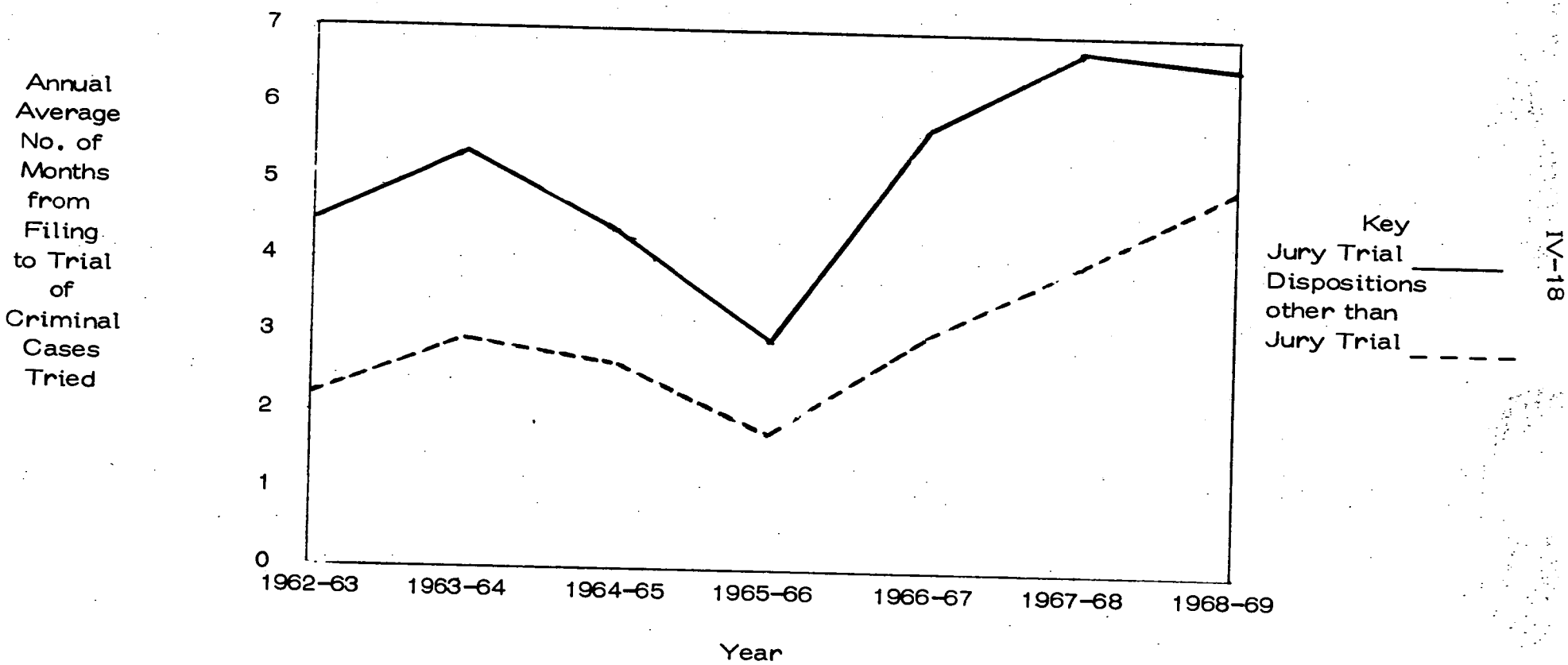
No. 8

ANNUAL PERCENTAGE OF DISPOSED CRIMINAL CASES "WASHED OUT" (STET, NOLLE PROSEQUI, NOT GUILTY CONFESSED AND PROBATION BEFORE VERDICT) IN CRIMINAL COURT: 1960-1970



No. 9

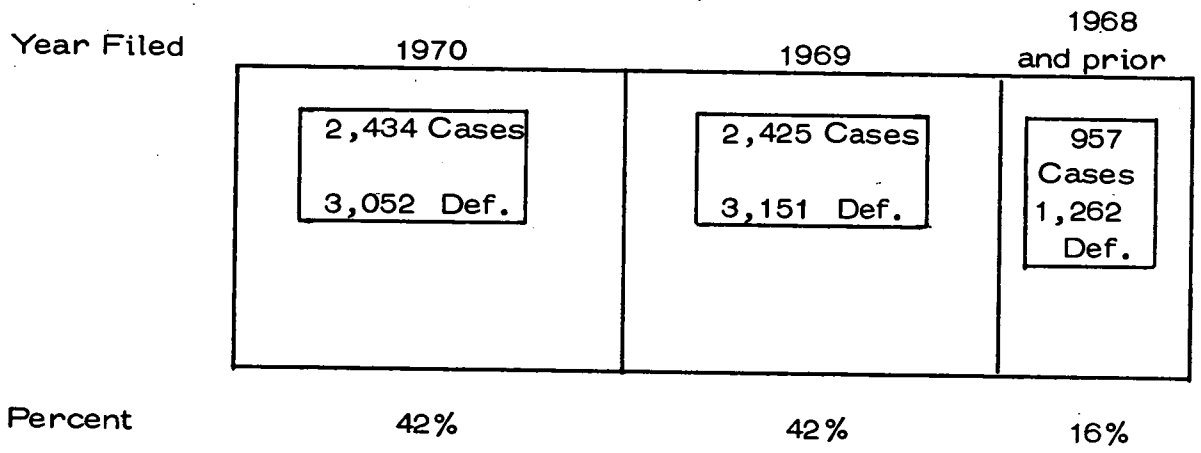
ANNUAL AVERAGE AGE IN MONTHS FROM FILING TO TRIAL
OF TRIED CRIMINAL CASES IN CRIMINAL COURT
1962-3 - 1968-9*



No. 10

BENCHMARK INVENTORY: PENDING UNTRIED INDICTMENTS AND APPEALS ON JULY 3, 1970 SUPREME BENCH, CRIMINAL COURT

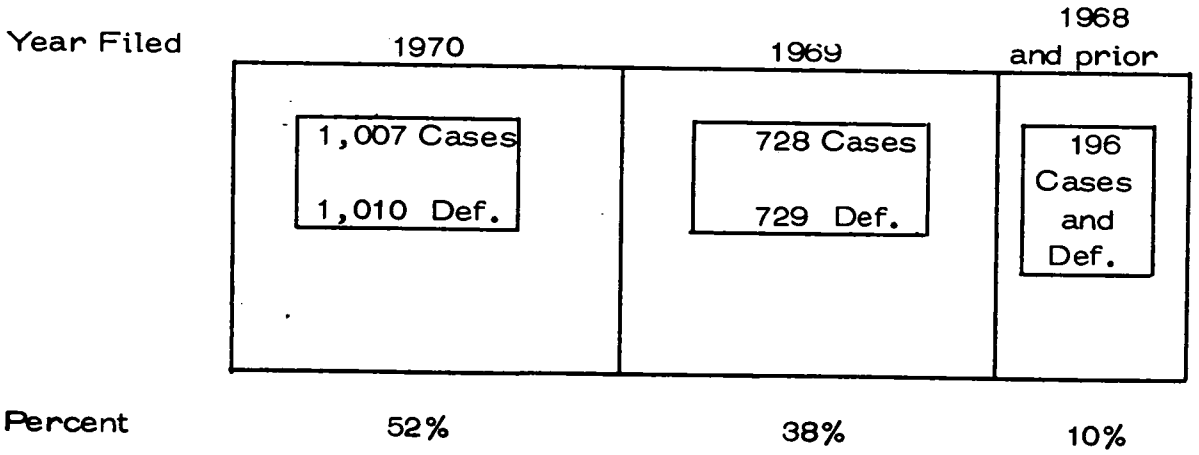
July 3, 1970
Pending
Indictments



TOTALS

5,816 Cases
7,465 Defendants

Pending
Appeals



1,931 Cases
1,935 Defendants

C. Analysis of Criminal Calendar Operations in the Criminal Court

The data presently available on calendar operations is prepared monthly by the State's Attorney's Office and submitted by the State's Attorney to the judges in the Criminal Court for their review. While this data does not fully convey all of the complex reality of caseflow, it is rich enough to permit a useful analysis.

1. Analysis of October 1969 through May 1970

The monthly reports of the State's Attorney's Office for Criminal Court, for the eight months of October 1969 through May 1970, are the first data we will analyze here. For the purpose of this Report, these are valid monthly operations to study in detail for several reasons. First, the period from October 1969 to May 1970 just precedes the beginning of this study which began in April 1970. There was little anticipation of this study by those in the court during the October to May period. Thus, the data represents the "normal" operations of the Criminal Court unaffected by the presence of a study group. Second, the data is relatively unaffected by new programs such as screening and special efforts on appeals from the Municipal Court which began to come forward in the last half of 1970. Third, this period precedes the date (July 1, 1970) of transfer of criminal calendaring responsibility from the State's Attorney's Office to the Supreme Bench. The data probably reflects the typical calendar management operations in the period 1967 through 1969, when there was a rapid increase

in the backlog of indictments and appeals. Fourth, this data provides a baseline analysis of calendaring performance in much the same way that the benchmark inventory (described previously in this chapter) provided a detailed look at what was pending in the court on July 3, 1970.

In the period October 1969 through May 1970 there were about 20 trial days a month ranging from 18 in November 1969 to 22 in October 1969. The total is 161 trial days in this period. During the period, seven court parts were assigned to the Criminal Court. Thus, there was a potential total of 1,127 trial days for the seven judges during this period. The average trial time per court per day was 4.1 hours for the period. It ranged from 3.7 hours in April 1970 to 4.7 hours in October 1969. The average trial time per case (defendant) for the period was 1.1 hours. The range was .84 hours to 1.2 hours. The reports for each court part show very few days when no court action occurred.

If the average of 4.1 hours per day per courtroom is taken as a baseline we should examine how many days fell below that averaging figure for all seven court parts. That analysis shows that in 413 days or 36% of 1,127 potential trial days in the period the court experienced less than 4.1 hours of trial activity:

(See chart next page)

ANALYSIS OF TRIAL DAYS WITH LESS THAN 4.1 HOURS
(8-MONTH TRIAL TIME PERIOD, OCTOBER 1, 1969-MAY 31, 1970)

PART*	0-1 HOUR	1-2 HOURS	2-3 HOURS	3-4 HOURS	TOTAL
A	1	5	11	20	37
B	0	7	24	43	74
C	1	6	22	46	75
D	0	3	10	49	62
E	0	5	35	44	84
F	0	1	10	25	36
G	0	7	12	26	45
TOTALS	2	34	124	253	413

*These part designations are ours.

Let us next examine the relative movement of the calendar during the period of eight months. The court started on October 1, 1969 with 6,465 pending indictments according to this reporting system. The indictments pending May 31, 1970 were about 6,081. Thus, the court achieved a 373 case gain (about 5%) on the indictment backlog over the eight months studied. With respect to appeals, the court started on October 1, 1969 with 1,245 appeals pending and ended the period on May 31, 1970 with 2,378 appeals pending. This is an increase of 1,133 backlog appeal cases (91%) in eight months. With respect to both indictments and appeals the through-put was substantial. Some 5,700 indictments were filed, and 6,100 were terminated. Some 1,200

traffic appeals and 700 criminal appeals were filed, totaling 1,900 appeals. There were 800 appeals closed. Total indictments and appeals filed was 7,300. Total indictment and appeals closed was 6,900 in the eight month period. Thus, the court was falling behind substantially in the appeals sector.

During the eight month period from October 1, 1969 through May 31, 1970, calendar operations resulted in the outcomes shown in the following table:

CALENDAR OPERATIONS
(8 months, Oct. 1969-May 1970)

	Average per month	Total 8 months	% of total
Indictments			
Closed (Disposed)	749	5,989*	54%
Sub Curia as to Verdict	24	190	2%
Continued	126	1,008	9%
Postponed	499	3,993	35%
TOTAL set on calendar	1,398	11,180	100%
Convictions	326	2,608	44%
Acquittals	104	833	14%
Stet	184	1,472	25%
Not Guilty Confessed	11	89	1%
Nolle Prosequi	100	801	13%
Probation without Verdict	24	186	3%
TOTAL closed (disposed)	749	5,989*	100%
TOTAL Jury Trials	23	187	
TOTAL Guilty Pleas	97	774	
Appeals			
Closed	88	704	59%
Continued or Postponed	62	497	41%
TOTAL set on calendar	150	1,201	100%
Convictions	32	253	36%
Acquittals	9	75	11%
Other (Stet, Not Guilty Confessed, Nolle Prosequi, Probation without Verdict)	47	376	53%
TOTAL Closed	88	704	100%

*The monthly totals on the State's Attorney's Reports totalled 6,072 for closed indictments, due to error in addition. This figure has been adjusted to 5,989 for consistency with the totals of convictions, acquittals, etc.

Some highlights of these calendar operations should be noted. Finality is achieved in 54% of the indictments set on the calendar. There was a substantial number of acquittals--about 14% of dispositions. As expected, jury trials played a minor role. However, the "washed out" cases (stets, nolle prosequi, not guilty confessed and probation without verdict) account for 39% of cases disposed. In fact, there were nearly as many washed out cases as convictions.

Most significant are the number of cases continued or postponed. Together, postponements (3,993) and continuances (1,008) total 5,001. These items constitute 44% of the calendared indictments. The percentage of indictments postponed over the period was 35%, ranging from 28% to 39% per month in the period. Based upon our experience in comparable court systems, this level is very high for any calendaring operation. It is slippage in the system and creates disturbances in the system as a whole.

If we divide the total of eight monthly calendar operations by the judicial complement assigned to the Criminal Court we can see activity by judge per day. Our assumptions are 1,127 full judicial days for all seven judges during the period of eight months.

DAILY JUDGE ACTIVITY

	Calendar per Judge per Court day*
Indictments	
Closed	5.4
Continued	0.9
Postponed	3.6
TOTAL set on calendar	9.9
Convictions	2.3
Acquittals	0.7
Stet	1.3
Not Guilty Confessed	0.1
Nolle Prosequi	0.8
Probation without Verdict	0.2
TOTAL Closed	5.4
Appeals	
Closed	0.6
Continued or Postponed	0.4
TOTAL set on calendar	1.0

*Based on 1,127 judicial days

The conclusions from the analysis of eight months of calendar operations are these:

(a) The court was sitting the normally expected number of days per month (about 20 days a month).

(b) The judges were averaging about 4.1 hours of courtroom sitting activity per day; about 36% of the available judicial trial days were lower than the average in terms of sitting hours.

(c) Appeals increased rapidly during the period.

(d) Great improvement is needed in calendaring techniques in view of the following:

- Only half the calendared indictments were closed during the eight-month period.
- Forty-two percent of disposed indictments, and 53% of disposed appeals, were "washed out"--stet, nolle prosequi, not guilty confessed, or probation without verdict.
- Forty-four percent of the calendared indictments, and 41% of the calendared appeals, were continued or postponed, and no statistics were kept on the reasons therefor.

(e) It is likely, although not certain, that improvement in calendaring will increase judge productivity, i.e., the number of cases disposed per judge per day. However, even if an intensive program of calendaring improvement gets underway--this has not occurred yet because no Criminal Assignment Commissioner has been named--there will be a period of several months to a year before new techniques can be developed and have an effect on the processing of current cases. Meanwhile, a substantial backlog of older cases will remain. To attack those immediately, it is logical to consider the temporary assignment of extra judges to Criminal Court. Court Management Systems suggested this to the Chief Judge of the Supreme Bench in a submission of suggested Criminal Assignment Guidelines at the end of November 1970. The assignment, as of January 1971, has in fact been increased to ten judges.

2. Analysis of Current Calendar Operations: July through December 1970.

This six-month period reflects the new responsibility of the Supreme Bench for the criminal assignment function. An analysis of the monthly reports (still prepared by the State's Attorney's Office) for this period reveals no substantial changes in the case-handling performance of

the Criminal Court as compared with the preceding eight-month period discussed in (1) above. This is not surprising, in view of the fact that, despite the statutory transfer of responsibility and the creation of the office of Supreme Court Criminal Assignment Commissioner, there was no change in staffing, and, to our knowledge, no change in basic procedure. No Criminal Assignment Commissioner was appointed (as of January 1971, this is still true), and no staff were added, despite the availability of a $198,000 grant. The table on the following page indicates the statistics for the six month period.

(a) The basic calendar operation statistics were about the same as for the previous period. In the six months, only 55% of the calendared indictments were closed, and only 61% of the calendared appeals. Forty-four percent of the calendared indictments, and 39% of the calendared appeals, were continued or postponed. "Washouts" (stet, nolle prosequi, not guilty-confessed, and probation without verdict) constituted 54% of closed indictments, and 55% of closed appeals. The 54% washed-out indictment figures reflects 703 cases disposed of by stet and nolle prosequi in a "year-end clearance" on December 28, 1970. However, if these are subtracted, the rate for the latter half of 1970 is still 42% (1,250/2,931) - exactly what it was for the period October 1969-May 1970.

(b) There were 5,933 indictments pending at the beginning of the period on June 1, 1970, with a total decline to 5,352 indictments pending on December 31, 1970. The decline was 581 indictments. However, that result was achieved by disposing of 703 cases -- presumably old cases -- by stet and nolle prosequi on December 28, 1970. This year-end clearance was not the sole force in lowering the number of pending indictments. There was a significant reduction during 1970 in the indictments issued by month owing, no doubt, to increased prosecutorial screening at the pre-indictment stage. In the period from January 1, 1970 through June 30, 1970 there were 3,640 indictments. In the period from July 1, 1970 through December 31, 1970 there were 3,175

indictments -- a reduction of 465. It should be recalled that there were about 9,400 new indictments in 1969, and only about 6,800 in 1970.

(c) Appeals pending on June 1, 1970 were 2,378; on December 31, 1970 the figure was 2,132. The intervening months experienced a continued upward swing in the appeals, reaching a high of 535 filed in July 1970. In view of the pressure of filings, the court did remarkably well to hold the line. In June 1970 the court disposed of 776 appeals -- with 264 convictions, 213 acquittals, 127 withdrawals, 121 dismissals, and 51 other dispositions.

(d) The judicial man-days available for Criminal Court during July and August totalled 239. During the period of September through December 1970, the Court maintained production in six of the Criminal Court parts. A seventh part was operated only part-time, which resulted in a lesser allocation of judge manpower than in the previous eight months. We estimate that the Court lost about 64 judge-days in the period September through December 1970 -- about 3 judge man-months. The indictments closed per month dropped to the 480-570 range compared with the prior eight months when the court closed indictments at the 620-930 range with many months then at 700 and 800 a month.

(e) Average sitting time per court per day was about the same as before -- 3.7 hours for two months calculated. The average trial time per case was about 1.1 hours.

CALENDAR OPERATIONS
(6 months, July-Dec. 1970)

	Average per month	Total 6 months	% of total
Indictments			
Closed	605	3,634*	55%
Sub Curia as to Verdict	12	70	1%
Continued	63	378	6%
Postponed	417	2,503	38%
TOTAL set on calendar	1,097	6,585	100%
Convictions	219	1,315	36%
Acquittals	61	366	10%
Stet	194	1,166	32%
Not Guilty Confessed	6	38	1%
Nolle Prosequi	113	677	19%
Probation without Verdict	12	72	2%
TOTAL closed	605	3,634*	100%
TOTAL Jury Trials	12	74	
TOTAL Guilty Pleas	48	285	
Appeals			
Closed	223	1,340	61%
Continued or Postponed	143	858	39%
TOTAL set on calendar	366	2,198	100%
Convictions	69	415	31%
Acquittals	32	194	14%
Other (Stet, Not Guilty Confessed, Nolle Prosequi, Probation without Verdict)	122	731	55%
TOTAL Closed	223	1,340	100%

* The monthly totals on the State's Attorney's Reports totalled 3,769 due to errors in addition. This figure has been adjusted to 3,634 for consistency with the totals of convictions, acquittals, etc.

D. Criminal Court Calendar Management Recommendations

This section begins with a summary of recent developments regarding the Supreme Bench Criminal Assignment * Office, including the role played by Court Management Systems, and a recommendation as to action which should be taken immediately by the court. This is followed by recommended general calendar management policies and specific operating guidelines for the Criminal Assignment Office.

1. Criminal Assignment Office: Recent Developments and Recommendations for Immediate Action

For a long period prior to April 1970, the Criminal Assignment Office was part of the State's Attorney's Office. It was staffed with six clerical officers who took directions from the State's Attorney. On July 1, 1970, however, the office was transferred to the Supreme Bench by a statute as follows:

CHAPTER 330

(House Bill 238)

AN ACT to add new Section ~~16 to Article 26 of the Annotated Code of Maryland (1966 Replacement Volume), title "Courts," to follow immediately after Section 15 thereof, and to be under the new subtitle "Criminal Assignment Clerk for the Supreme Bench of Baltimore City," establishing the position of a Criminal Assignment Clerk for the Supreme Bench of Baltimore City and generally relating thereto.~~ 22-5A(A)(B) AND (C) TO ARTICLE 4 OF THE CODE OF PUBLIC LOCAL LAWS OF MARYLAND (1969 EDITION), TITLE "BALTIMORE CITY," SUBTITLE "ADMINISTRATIVE OFFICE OF THE SUPREME BENCH," ESTABLISHING THE POSITION OF A CRIMINAL ASSIGNMENT COMMISSIONER BY THE SUPREME BENCH OF BALTIMORE CITY AND GENERALLY RELATING THERETO.

* As used in Baltimore City court parlance and in this Report, "assignment" of a case includes not only the designation of a specific judge to hear it, but also the calendaring (or scheduling) of the case for judicial action.

~~Section 1. Be it enacted by the General Assembly of Maryland, That Section 16 be and it is hereby added to Article 26 of the Annotated Code of Maryland (1966 Replacement Volume), title "Courts," and under the new subtitle "Criminal Assignment Clerk for the Supreme Bench of Baltimore City," to follow immediately after Section 15 thereof, and to read as follows:~~

~~16.~~

~~There shall be a Criminal Assignment Clerk for the Supreme Bench of Baltimore City. He shall be appointed by and shall hold his office at the pleasure of the Court. He shall receive compensation as provided in the annual Court budget. He may appoint, subject to the approval of the judges of the Court, deputy criminal assignment clerks and other employees as the requirements of his office necessitate, and these individuals shall receive compensation as provided in the annual Court budget. The Criminal Assignment Clerk shall assign all criminal cases to the several judges of the Court.~~

~~The office of the State's Attorney for Baltimore City shall no longer be charged with the responsibility of criminal case assignments for the Supreme Bench of Baltimore City.~~

~~Sec. 2. And be it further enacted, That this Act shall take effect July 1, 1970.~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, THAT SECTION 22-5A(A) (B) (C) BE AND IT IS HEREBY ADDED TO ARTICLE 4 OF THE CODE OF THE PUBLIC LOCAL LAWS OF MARYLAND (1969 EDITION, TITLE "BALTIMORE CITY," UNDER THE SUBTITLE "ADMINISTRATIVE OFFICE OF THE SUPREME BENCH" TO FOLLOW IMMEDIATELY AFTER SECTION 22-5 THEREOF, AND TO READ AS FOLLOWS:

22-5A.

THE OFFICE OF CRIMINAL ASSIGNMENT COMMISSIONER IS CREATED WITHIN THE ADMINISTRATIVE OFFICE OF THE SUPREME BENCH OF BALTIMORE CITY.

(A) THE SUPREME BENCH OF BALTIMORE CITY SHALL APPOINT, AS CRIMINAL ASSIGNMENT COMMISSIONER, A QUALIFIED PERSON WHO SHALL SERVE DURING ITS PLEASURE ~~AND RECEIVE SUCH COMPENSATION AS SHALL BE APPROVED BY THE SUPREME BENCH AND PROVIDED FROM TIME TO TIME IN ITS ANNUAL OPERATING BUDGET. THE SUPREME BENCH OF BALTIMORE CITY, UPON THE RECOMMENDATION OF THE CRIMINAL ASSIGNMENT COMMISSIONER, APPROVED BY THE ADMINISTRATOR, SHALL APPOINT SUCH DEPUTY COMMISSIONERS, CLERKS, AND OTHER EMPLOYEES AS THE SUPREME BENCH FROM TIME TO TIME SHALL DETERMINE TO BE NECESSARY FOR THE EFFICIENT OPERATION OF THE SAID OFFICE, ALL OF WHOM SHALL SERVE AT ITS PLEASURE AND RECEIVE SUCH COMPENSATION AS SHALL BE APPROVED BY THE SUPREME BENCH AND INCLUDED IN ITS ANNUAL OPERATING BUDGET.~~ THE BUDGET FOR THE CRIMINAL ASSIGNMENT COMMISSIONER AND THE COMPENSATION FOR THE CRIMINAL ASSIGNMENT COMMISSIONER AND SUCH PERSONNEL AS

MAY BE APPOINTED BY THE SUPREME BENCH TO CONDUCT THE ACTIVITIES OF HIS OFFICE, SHALL BE AS DETERMINED FROM TIME TO TIME BY THE MAYOR AND CITY COUNCIL OF BALTIMORE PURSUANT TO THE PROCEDURES GENERALLY FOLLOWED IN SETTING THE BUDGET FOR THE OFFICE OF THE ADMINISTRATIVE OFFICE OF THE COURTS AND THE COMPENSATION OF EMPLOYEES THEREIN.

(B) THE CRIMINAL ASSIGNMENT COMMISSIONER, IN ACCORDANCE WITH SUCH RULES AND POLICIES AS MAY BE ADOPTED FROM TIME TO TIME BY THE SUPREME BENCH, AND UNDER THE GENERAL ADMINISTRATIVE SUPERVISION OF THE ADMINISTRATOR, SHALL

(I) DEVELOP PLANS AND PROCEDURES FOR THE ASSIGNMENT OF CRIMINAL CASES FOR ARRAIGNMENT, HEARING OF MOTIONS, SPECIAL PROCEEDINGS, TRIAL, MOTION FOR NEW TRIAL, AND DISPOSITION BEFORE THE JUDGES SITTING IN THE CRIMINAL COURT OF BALTIMORE.

(II) ASSIGN ALL CRIMINAL CASES FOR PROMPT ARRAIGNMENT, TRIAL, OR OTHER INDICATED ACTION BY THE COURT; AND PERFORM ALL RELATED DUTIES AS DETERMINED BY THE SUPREME BENCH.

(III) MAINTAIN SUCH RECORDS AND STATISTICS AND PERFORM SUCH OTHER DUTIES AS THE SUPREME BENCH MAY, FROM TIME TO TIME, DIRECT.

(C) THE STATE'S ATTORNEY FOR BALTIMORE CITY SHALL HEREAFTER BE RELIEVED FROM THE RESPONSIBILITY OF ASSIGNING CRIMINAL CASES FOR TRIAL OR OTHER PURPOSES BEFORE THE JUDGES SITTING IN THE CRIMINAL COURT OF BALTIMORE.

SEC. 2. *AND BE IT FURTHER ENACTED,* THAT THIS ACT SHALL TAKE EFFECT JULY 1; 1970.

Approved April 22, 1970

To summarize, the statute establishes a policy of centralization of Criminal Court case assignment (i.e. calendar management) in one office under exclusive Supreme Bench control. It provides that the assignment of criminal cases to be the sole responsibility of the Supreme Bench, removing any responsibility therefor from the State's Attorney's Office;

that the Criminal Assignment Commissioner, appointed by the Supreme Bench (presumably meaning all the judges thereof) and serving at its pleasure, now administers assignment of criminal cases; and that this Commissioner be within the Administrative Office of the Supreme Bench (meaning that he is to be supervised by the Supreme Bench Administrator). The staff of the Commissioner (which, together with the Commissioner himself, is known as the "Criminal Assignment Office") are also to be appointed by the Supreme Bench and their salaries are to be paid for by the Mayor and City Council. The specific job of the Commissioner is to develop plans and procedures for criminal case assignment, to carry them out -- i.e. conduct criminal case assignment on a day-to-day basis, and maintain statistics required by the court.

Immediately after the passage of this statute, Court Management Systems submitted to the Chief Judge and Court Administrator, on May 12, 1970, a memorandum outlining a program for court-managed criminal assignment and began to develop plans to modernize the Criminal Assignment Office. This planning began approximately 50 days prior to the July 1, 1970 take-over date set by law. In the memorandum we (1) suggested development of tentative personnel standards for the office, job descriptions and salary requirements; (2) outlined operating principles for a new assignment process and suggested rules in effect elsewhere in Maryland; (3) suggested a complete inventory of active criminal cases;

(4) urged a training program for the new office staff; (5) suggested a process of case review of old cases by the court to start in the fall, and (6) outlined how an automated inventory would lead to a more comprehensive management system for criminal caseflow purposes.

To assist the court further in implementing the new statute, at the request of the Chief Judge, Court Management Systems prepared in sufficient detail a total staffing plan for the Assignment Office keeping in mind the overall reorganization of the criminal caseflow process. In June, July, and August 1970, Court Management Systems prepared a staffing plan and personnel job descriptions, submitted these to the court, and discussed them with the Chief Judge, Court Administrator and city staffs. This lengthy and time-consuming process involved a review of a document over 50 pages long which described the general and specific tasks of the Criminal Assignment Commissioner and his deputy and the special duties of other positions in a special calendar operations section, a felony calendar operations section, a scheduling and notification section, and an inventory and surveillance section.

Concurrently with the two efforts mentioned above, and at the request of the Chief Judge, Court Management Systems began to revise in June 1970 a pending $198,000 grant to finance the new Criminal Assignment Office. Working with the Governor's Commission on Law Enforcement and the Administration of Justice and the Court, Court Management Systems prepared a revised grant application to conform to the new requirements of the law establishing the Criminal Assignment Office as well as the envisioned reorganization of

calendaring procedure. In this document (also too long to be included here) were laid out the basic concepts and major operating principles for the Criminal Assignment Office to ease the implementation process for the court.

Thus, by the fall of 1970, Court Management Systems had performed the following tasks to implement the establishment of the Criminal Assignment Office:

(1) Outlined a complete general program for the Criminal Assignment Office (May 1970).

(2) Completed the Benchmark Inventory.

(3) Developed a staffing and personnel program for the office.

(4) Revised a grant application to finance the office.

(5) Submitted basic concepts and operating principles for this office.

In September 1970, Court Management Systems reviewed progress in this area with the Steering Committee of the Maryland Bar Foundation. In response to suggestions, Court Management Systems prepared further revisions of recommendations in preliminary form. By mid-October the Steering and Advisory Committees received the recommendations in serial form without detailed explanations of each recommendation. The first draft provided general policy recommendations and more specific recommendations to improve the felony caseflow process. Discussions were held in early November with Steering and Advisory Committees on this part of the final report. Further modifications were suggested in the recommendations. On November 27, 1970, Court Management Systems set forth in outline form major procedures for the Supreme Bench Criminal Assignment Office. This memorandum was then

distributed to the Chief Judge and the State's Attorney for further review and comment.

As of January 1971, the essential first step of appointing the Criminal Assignment Commissioner still has not been taken by the Supreme Bench. To assure the establishment of genuine court control of calendar management, and to begin as early as possible the development of improved calendaring and assignment techniques and related information systems, the following immediate action is strongly recommended to the Supreme Bench:

(a) A Criminal Assignment Commissioner should be appointed as soon as a competent individual can be found. The importance of this office cannot be overemphasized. A Criminal Assignment Commissioner should have a law degree, and if possible, criminal trial experience; he must have experience in data processing and information systems; and finally, he must be an able manager.

(b) The Criminal Assignment Commissioner, once appointed, should proceed to hire and train a staff with the structure and qualifications indicated on the organization chart on the following page.

(c) The Criminal Assignment Commissioner should immediately undertake a parallel development of improved calendaring techniques and an improved management information system along the lines of the recommendations of subsections (2) through (6) below.

2. General Management Policies for Operation of the Criminal Court Calendar

There are seven basic management policies which ought to govern the criminal calendar. These are:

PROPOSED ORGANIZATION AND STAFFING
SUPREME BENCH CRIMINAL ASSIGNMENT OFFICE

(Assuming Complement Supported by the Revised Grant Application)

SYSTEMS ANALYST CONSULTANT
($21,023--Contract Services)

(1) Criminal Assignment Commissioner (To be appointed)
($20,000 annual salary--$5000 3 mos. vacancy--$15,000)
Acting Criminal Assignment Commissioner:
Mrs. Ernestine Karukas

(2) Deputy Criminal Assignment Commissioner (To be appointed)
($17,000 annual salary--$5562 Gr 24 Clerk--$11,438)

Special Calendar Operations Section
(3) Court Secretary II
(Grade 24--$5562)
(4) Court Clerical Asst III
(Grade 22--$5094)

Regular Calendar Operations Section
(5) Docket Assgmt Clerk
(Grade 32--$8022)
(6) Court Clerical Asst II
(Grade 26--$6088)
(7) Court Clerical Asst II
(Grade 26--$6088)

Schedule Verification/ Notification Section
(8) Court Secretary II
(Grade 26--$6088)
(9) Court Clerical Asst III
(Grade 24--$5094)

Automated Inventory/ Surveillance Section
(10) Coding Technician
(Grade 30--$7345)
Inventory Control
(11) Account Clerk
(Grade 24--$5562)
Surveillance Coding
(12) Account Clerk
(Grade 24--$5562)
Inventory Coding
(13) Account Clerk
(Grade 22--$5562)
Inventory Keypunching

PROPOSED UNIT FUNCTION ASSIGNMENTS

- Schedules/Distributes Calendars and Changes for each Judicial Process on:*
  1. Remands
  2. Appeals
  3. Jury Trials
  4. Special Calendar Calls
- Maintains Statistics on:* Preliminary Hearing; Pre-trial Process; Trial Process; Sentence Process; Post-trial Processes

- Screens/Schedules/Distributes Calendars and Changes for each Judicial Process on:**
  1. Grand Jury Mun. Ct. Referrals
  2. "Interests of Justice" Referrals
  3. Mixed Ct. Jurisdiction Referrals
  4. Ultra Mun. Ct. Punishment Referrals
  5. Special Presentments
  6. Informations

- Makes Pre-scheduling Checks
- Conducts Document/Process Checks**
- Provides Direct Notifications of all scheduled dates and changes for each judicial process scheduled
- Institutes Service of other Notices by Sheriff or other means as determined appropriate
- Tracks Service of Capias/Bench Warrants

- Maintains Case Status Records*
- Keeps Calendar of Non-Available Defendants
- Maintains Defendant Status Surveillance*
- Maintains Process Time Lapse Data
- Receives/Codes Case Input Data*
- Key punches code sheet data*
- Checks/Distributes Case Inventories

* Utilizes computer programmer, tab equipment operator and other Court data processing personnel and equipment.
**Referral Review Process; Presentment; Limited Arraignment; Pre-trial Process; Trial Process; Sentence Process; Post-trial Process.

(a) THE JUDGES OF THE SUPREME BENCH ARE RESPONSIBLE FOR CONTROLLING EACH CRIMINAL INDICTMENT AND APPEAL FROM FILING TO DISPOSITION, AND SHOULD DELEGATE THEIR RESPONSIBILITY TO A CRIMINAL ASSIGNMENT JUDGE APPOINTED BY THE CHIEF JUDGE.

Chapter 330 of the Laws of Md. 1970 now places the responsibility for calendar management specifically on the judges of the Supreme Bench and it excludes the State's Attorney's Office. Clearly, court control of calendaring will be facilitated if exercised by one Criminal Court judge designated as Criminal Assignment Judge. Regardless of legislation, the old habits of the State's Attorney's Office and the defense bar may be difficult to alter. In our discussions with officials it has already been noted that pressure will be applied to the bench to relinquish a bit of control here and there, eventually placing the Supreme Bench in an untenable position of having abdicated power but remaining responsible for ultimate results of the system. This recommendation is perhaps the most basic we can offer to the court to help it extricate itself from the anticipated pressure to give in to the old ways of handling criminal cases. It can be safely predicted that, the extent to which the Supreme Bench can remain in control of the criminal calendar management on a daily basis, the felony caseflow process will improve. A simple admonition to the court -- "to brook no interference" -- is the most that can be said.

(b) THE CHIEF JUDGE OF THE SUPREME BENCH SHOULD SERVE INITIALLY AS CRIMINAL ASSIGNMENT JUDGE TO CONTROL THE CRIMINAL CALENDAR AND SUPERVISE THE CRIMINAL ASSIGNMENT COMMISSIONER.

During the period of transition and in view of the difficulties in the criminal calendar the best policy would be to have the Chief Judge devote a maximum amount of his time to control the criminal calendar and to supervise the Criminal Assignment Commissioner--in other words, to act as Criminal Assignment Judge. We envision that, as Criminal Assignment Judge, he would be involved daily and hourly in the process of managing the calendar to produce the results expected and to exercise the judicial discretion needed to keep the calendar running smoothly. This is especially needed while the new staff in the Criminal Assignment Office is learning new policies, rules and procedures. At some future date, more of the responsibility should be shifted to the Criminal Assignment Commissioner, and another judge can assume the responsibility of Criminal Assignment Judge.

(c) THE JUDGES OF THE SUPREME BENCH SHOULD ESTABLISH AND ENFORCE TIME LIMITS TO GOVERN CRIMINAL CALENDAR OPERATIONS.

There is no standard today in Baltimore City regarding the time within which indictments and appeals ought to be tried and there should be. In Section 6 below, specific time limits are suggested for adoption by the court. Such limits, once established by the court, should be enforced. If a case reaches six months in age (twice the suggested disposition time limit), the Criminal Assignment Judge should investigate the circumstances and direct the prosecution and defense to conclude it.

(d) THE CRIMINAL ASSIGNMENT JUDGE SHOULD STRICTLY ENFORCE A RESTRICTIVE POLICY ON POSTPONEMENTS AND CONTINUANCES.

This simple suggestion is difficult to carry out, but it is a part of the responsibility for management articulated in recommendation (a) above. Among friends, long-time acquaintances and a generally close atmosphere of practice, this task is a most unwelcome one. The judges will need ample cooperative support from the bar to implement this recommendation. The Chief Judge and Criminal Court judges will need the backing of the bench and the bar to provide the firmness to the system which it needs. Trial dates and hearing dates will become more certain if the policy is carried out.

(e) THE OBJECTIVES IN SETTING CASES ON THE CRIMINAL COURT CALENDAR SHOULD BE THESE:

- TO MAXIMIZE THE PROBABILITY OF DISPOSITION, BASED UPON THE AVAILABILITY OF JUDGES, PROSECUTORS, DEFENSE COUNSEL, AND WITNESSES AND UPON REASONABLE DISPOSITION RATES PER JUDGE;
- TO DISCOURAGE "JUDGE-SHOPPING" BY ASSIGNING CASES TO SPECIFIC JUDGES AT RANDOM
- TO GIVE PRIORITY TO CASES WITH JAILED DEFENDANTS AND CASES MORE THAN THREE MONTHS OLD.

Setting cases so as to match the manpower available is, at best, a predictive game which has countless variables and which is an art, not an exact science. The case setting techniques of the present Supreme Bench Criminal Assignment Office are, to our knowledge, essentially those

inherited from the period when this function was controlled by the State's Attorney's Office. These techniques did not accomplish, among other things, the setting of calendar dates for cases without extreme overloading or underloading of court parts. The postponement-continuance rate has remained at about 45%. With a strong mandate of judicial authority, clearer guidelines, and an expanded staff, it will be possible for the CAO to improve its information system and make calendaring more sensitive to the relevant facts. There should be an emphasis on communication by the CAO with all necessary parties -- lawyers, defendants, and official witnesses -- to determine their availability and to increase the probability that, once a date is set, the case is tried or at least some progress is made toward its disposition.

(f) SPECIALIZATION OF COURT PARTS WITH RESPECT TO TYPE OF CASE HANDLED SHOULD NORMALLY BE AVOIDED.

With a strong centralized calendaring system of the kind which will hopefully develop in the Criminal Court, there is no need to restrict one court part to narcotics cases, another to gambling cases, etc. Such specialization should in fact be avoided because it prevents flexibility in assignment of cases. The Chief Judge and the State's Attorney have already acknowledged a desire to follow this policy in the future.

(g) THE CRIMINAL ASSIGNMENT JUDGE SHOULD REQUIRE CONSOLIDATION OF ALL PENDING CASES INVOLVING THE SAME DEFENDANT BEFORE THE SAME JUDGE TO THE EXTENT POSSIBLE.

There is a need for trial and sentencing purposes to see the entire picture of all indictments pending against the same individual. It would reduce the problem of two judges acting in diverse ways because of factors unknown to each. For the defendant this requirement would provide continuity of treatment in one proceeding to the extent possible depending upon availability of witnesses, proof, etc. Logic, efficiency and equal treatment require this policy. In one-judge courts there should be no departure from this policy. In multi-judge courts, such as the Criminal Court, there should be little departure.

3. Recommended Improvement in Criminal Court Information System.

The Criminal Court, and especially the Criminal Assignment Judge and Commissioner, need an improved management information system if calendar management is to be improved. The system will have to be developed concurrently with calendaring techniques; an improvement in management often demands an improvement in information, and vice versa. Therefore, the system must be flexible and capable of being substantially altered as much as once per week during its first year of operation. For this reason, sophisticated computer systems should be avoided during the first year; any computer or electronic data processing system employed should be quite simple and capable of quick piecewise modification. Advanced hardware will not solve the basic question facing the court at this time: How can calendar management be improved, and, in improving it, what information will be needed?

(a) Operating information. For each individual case, the CAO staff and Criminal Assignment Judge will need information on the age of each case, its history of continuances and postponements and information on the identity and location of official witnesses. Age information in particular, will have to be carefully watched to enforce the time limits suggested in Section 6(c) below. If the recommendations in Section 6 below are followed, the CAO will be responsible for notification of official witnesses such as police. Regarding police witnesses, it may be advisable to record the policeman's duty and vacation schedule in a standard format for easy reference in the event that the case has to be scheduled without the officer present. Regarding postponements and continuances, the date of each should be recorded, along with the new calendared date, the party requesting the postponement, and the reason for the request. After a few months' experience, this can all be done with a standardized abbreviated notation.

(b) Management statistics: These statistics are of two kinds: periodic inventories of pending cases, and periodic performance reports on aggregate case histories, e.g., average disposition times or average number of court appearances required for disposition. Periodic inventories allow the court to measure its progress in disposing of current incoming cases and backlog, and should include information on the age distribution of pending cases, their present triability (that is, how many are untriable because the defendant is a fugitive or in a mental hospital?), the type of criminal charges involved, and the bail/jail status of the defendant. Inventories should also be used to identify management exceptions--individual cases which have exceeded processing time limits and need special action.* The benchmark inventory discussed in Appendix A (see Table 8) is of this type. Performance reports should relate disposition times and number of postponements to inherent case characteristics such as charge, presence or absence of counsel, jail/bail status of defendant, etc., and also to extrinsic factors such as new calendar management programs. In this way, new calendaring techniques can be tested to see if they are worth continuing.

* It may also be useful to produce inventories of the pending caseloads of individual defense attorneys and prosecutors.

4. Operating Guidelines for the Criminal Assignment Office

The Criminal Assignment Commissioner and his office are central to the improvement of criminal calendar operations. In each of the seven general management policies recommended above we have attempted to articulate the roles of the Supreme Bench, Chief Judge, and Criminal Assignment Judge in the improvement program. The basic tasks to complement with and to implement these policies need additional careful definition at this point.

In general, our philosophy is that the operational guidelines for criminal calendar management should be kept simple to begin with, and they should constantly be reviewed in the future to avoid encrustations of needless complexity. On the other hand, we would be remiss in our obligation to provide sufficient specificity so that the general management policies recommended above can be tied to the reality of step-by-step case processing.

a. Scheduling of cases. The act of setting a case on a specific day for hearing or trial should depend upon (1) the number of judges, prosecutor and defense counsel who are not only ready to proceed but who are personally available on the day set for motion; (2) the days available in the next few weeks or months ahead; (3) the readiness and availability of counsel and witnesses (police, medical, psychiatric and others); (4) the availability of the defendant (his status is critical, i.e., is he a fugitive, ill, undergoing mental examination, far off in confinement elsewhere?); (5) the completeness of the case file (is every document there that is needed?); (6) the nature of the proceeding to be scheduled (is it a 10-day jury trial or a 5-minute

arraignment?); and (7) the legal period within which action should be commenced.

We believe that this complex reality has been lost sight of in Criminal Court by adoption of incomplete policies which are not conducive to balanced calendar management. An illustration is the fact that, in the present calendaring system, when Assistant State's Attorneys certify to the Criminal Assignment Office that they are ready to proceed further with a case, it moves and is set for the next step. This policy keeps control in one office but it ignores the needs of others as well as other factors. Another example is that cases are set on the criminal calendar without individual examination of the readiness or availability of defense counsel. The results of such a policy contribute to wheel-spinning continuances or postponements. Furthermore, the number of cases set on the calendar appears to be set by guessing, without real analysis of cases. Compounded with these difficulties are the State's Attorney "special" cases which move on a different time track, at a different rate depending upon the peculiarities of the cases and wishes of an individual.

In calendar management there are important factors to consider; the right of a defendant to a speedy trial, particularly if in confinement; the need for the court and State's Attorney to take special action to relieve congestion, delay and backlog; the interest of the public in effective judicial administration to conclude public accusations promptly, whether by conviction, acquittal or dismissal. Much is made of the feeling that defendants may never be tried and that defendants do not really care about delay because the more delay, the more witnesses disappear or move away or their memories fade. We have heard this argument made repeatedly during the course of this study and we have disregarded it completely for these reasons. It reveals a callous indifference to the public and it neither accords dignity to the judicial process, nor instills respect in the defendant for the law. There is a distinct further loss in the defendant's sense of "community." Many defendants who are "first-timers" in the system and

who probably would work out well on probation, if convicted, may be crushed by circumstances where justice cannot be had promptly. Delay also causes witnesses to withdraw cooperation. These reasons are sufficient in our judgment to justify very serious concern about the ramifications of illogical, or institutionally self-centered policies of setting cases for hearings or trials.

We recommend that the disputes in setting the calendar for any purpose should be resolved to further the general management policies recommended above, especially in the beginning, by joint involvement of the Criminal Assignment Judge and Criminal Assignment Commissioner. In this way the setting policies may be made more uniform and equal in application to all disputes to avoid giving continuous preference to any actor in the system. This form of impartial administration is vital to gain and keep the respect and the cooperation of the bar and it will reduce arbitrariness to a minimum where setting conflict is irreconcilable.

We recommend that maximum effort be made to set cases after discussion, by telephone or otherwise, with the prosecutor and defense counsel, who we assume will confer with key witnesses about their readiness and availability. This concern will reduce to a minimum the "no-shows" and it will firm up the calendar for each person in the system.

As indicated above, time limits for taking action in setting cases have never been clearly stated in Criminal Court. In Section 6(c) below new case time limits are suggested in terms of court working days. In a typical case under those suggested limits, a plea or dispositional hearing should be held by the 19th court working day after the indictment is filed, the omnibus-hearing on motions should be held by the 38th day after the indictment is filed, and trial should be conducted on or before the 57th day.

It is important to recognize that there can be NO rational calendar management if there are NO true time limits. The "pace" for the movement of all cases must be publicly established so that each participant in the criminal justice system knows what is expected of him and when he has to make up his mind. This rigidity is obviously softened by

a continuance policy which will recognize circumstances beyond control of the parties. The responsibility for establishing this policy is the Supreme Bench's. The Criminal Assignment Commissioner must see to it that these established norms prevail in the criminal caseflow process.

b. Notification. Along with the sound case setting policies we believe that a calendar is kept functioning well if the court itself accepts the obligation to provide ample notice to all persons who must participate in the process. At present, complaints are widespread about the notification system of the Criminal Assignment Office. We recommend that the Criminal Assignment Office execute the policy of maximum advance notice of each date it sets.

More specifically, the Criminal Assignment Office should give notice of trial or hearing dates to the judges, prosecutors, defense counsel, official witnesses (police or other public officials), bondsmen, probation staffs, and, for defendants in custody, give notice to the jail personnel themselves. There is no need to require the Sheriff to notify the jail to produce defendants for trials or hearings. It should be done directly by the CAO. For witnesses other than public officials, notification should be the responsibility of the prosecution and defense.

Postcards are the most commonly used notice devices. Occasionally, lists may be used as in the case of the jail. The telephone itself may provide the most convenient method. The least effective method is publication in a newspaper. The method of notice should be the most simple, inexpensive and direct in the circumstances.

c. Continuances and postponement policies. Over a 12-month period the court may grant 7,500 continuances or postponements. The number of postponements or continuances denied has never been recorded in the records which we have examined. In the preceding part of this section postponements and continuances on the monthly trial calendar were analyzed with the conclusion that sensitivity to relevant facts such as the availability of parties and the age of the case may be the reason why the court was forced into such an abnormally high rate of postponements and continuances.

(For convenience the word "continuance" is used here to include both postponement and continuance since both are used by the court.) The calendaring policies herein should greatly reduce requests for continuances, but there will have to be a policy for dealing with those which inevitably arise.

In a multi-judge court on a central criminal calendar, the trial judges ought to forego granting continuances and centralize the power in the Criminal Assignment Judge except in a case where trial has begun; in such a case, only the trial judge himself should exercise the power. This continuance-granting power, within clearly set limits, should be delegated to the Criminal Assignment Commissioner, with review by the Criminal Assignment Judge.

It is impossible at this time to recommend which classes of continuances ought to be handled routinely by the Criminal Assignment Commissioner. Experience will enable the Criminal Assignment Judge to determine this better in the future. Currently, there are only guesses as to why 7,500 continuances are granted. It is recommended (see Subsection (3) above) that the Criminal Assignment Commissioner begin to record in every case each continuance granted, the requesting party, the reason for granting the continuance, and the length of the continuance. Out of a month's experience the reasons can be sorted out logically and be given a standard nomenclature. Based on this quantified data, discretion can be better exercised.

5. Simplifying Criminal Procedures

While reviewing the criminal calendar, a series of other ideas began to emerge which deserve consideration. The basic reason for offering these suggestions is to simplify criminal procedure, to reduce the number of steps in the process and to incorporate some new thinking about criminal procedures into the criminal caseflow process.

a. Informations

Court Management Systems suggested and recently the State's Attorney advised Court Management Systems that beginning on January 4, 1971, informations, rather than Grand Jury indictments, will be used on all Criminal Court cases not involving felonies. The Grand Jury, which indicts almost all cases presented to it, has a negligible effect -- other than delay -- on the criminal process. It seems most reasonable to avoid using the Grand Jury except in cases where a community voice is needed in troublesome or notorious cases.

b. Arraignments

The Arraignments are scheduled each morning in each criminal court. They consume about an hour, and generate prisoner movement. For numerous reasons, arraignment has become a useless formality until counsel is appointed;

even then, arraignment ought to be coordinated with the next judicial step such as a plea hearing or motion hearing. If arraignment is eliminated as a separate step, and if the court makes other efforts by mailing the indictment or serving it personally on jailed defendants, it is then incumbent upon counsel to advise the defendant about the legal implications of the document before any further court action in the typical case. Once counsel is prepared, it is an easy matter to hold a formal arraignment at a later stage combined with some other procedural step such as a hearing or trial.

The outline of major procedures in subsection (6) below describes how we would envision arraignment to be handled in the future should this suggestion receive approval and be implemented.

c. "Open file" Policy

During the course of the study the need for greater mutual discovery by both prosecution and defense was expressed. At a meeting of the Advisory and Steering Committees both the Chief Judge and the State's Attorney advised the group that this policy will guide the criminal caseflow process. The soundness of such a policy is manifold. The element of surprise is reduced, each side obtains access to the basis of the other's case (except where confidentiality or security is significant and must be protected). The need for discovery motions is

reduced. The openess of the system may promote a better basis for plea discussions and resolve many pre-trial matters without endless legal maneuvers. We urge that the policy be encouraged to the extent possible consistent with safeguards.[1]

d. Omnibus Hearings

Motion practice before trial is typically initiated by the moving party, who under the Maryland Rules must make certain motions before trial.[2] These initiations tend to become scattered efforts - and it has been discovered that if all motions before trial from both sides are heard and concluded in one proceeding, it is more efficient and logical.[3] We suggest that a simplification of criminal motions practice include the combining of the maximum number of motions before trial into a single hearing: an omnibus hearing.

The procedures outlined below include the use of the omnibus hearing.

e. Plea Conferences

Pleas of guilty have become a small part of the total criminal caseflow in Baltimore City as noted previously. If the State's case is secure, and pleas are withheld thus forcing trial, there is nothing

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1 For more elaborate discussion see American Bar Association, Standards Relating to Discovery and Procedures Before Trial.

2 See Maryland Rules of Procedure, Rule 725b, Defenses and Objections Before Trial.

3 See American Bar Association, Standards Relating to Discovery and Procedure Before Trial and Maryland Rules of Procedure, Rule 725b and Rule 725d.

anyone can do in a specific case short of coercion. However, certain ground rules by defense counsel and prosecutor (without the judge) on an even standing, the defendant's rights will be fully protected and the matter can be evaluated more fully.[4]

f. Disposition by "stet"

The disposition "stet," which is part of Maryland criminal procedure, is a disposition which leaves a case in an ambiguous status, in great contrast to an outright dismissal on the motion of the State of the case which clears court records of the case forever. We recommend that a statewide study be made of the need for this type of disposition.

6. An Outline of Major Procedures of the Supreme Bench Criminal Assignment Office in Controlling Criminal Caseflow

The purpose of this part is to outline the major procedures proposed for the Criminal Assignment Office during the life of a criminal case. Criminal Assignment Office functions would include monitoring and control. Monitoring, a less important role, not analyzed further here, is the role the Criminal Assignment Office (CAO) plays with respect to the inspection of the movement of a case from entry into the Criminal Court (i.e., receipt

4 American Bar Association, Standards Relating to Guilty Pleas.

of the filed papers from Municipal Court by the Criminal Court Clerk) until the date of filing of the indictment or information (during this time, the case is controlled by the prosecutor). Control by the CAO begins at the time of filing of an indictment, information, or appeal. Control is defined by the procedures outlined in subsections (a) and (b) below. Subsection (a) deals with control procedures for current cases (open cases filed within three months of the initiation of these procedures); the diagram on the following page illustrates current case procedures. Subsection (b) deals with control procedures for backlog cases (open cases other than current). Subsection (c) is a table of suggested time limits for accomplishing the procedures outlined in subsection (a).

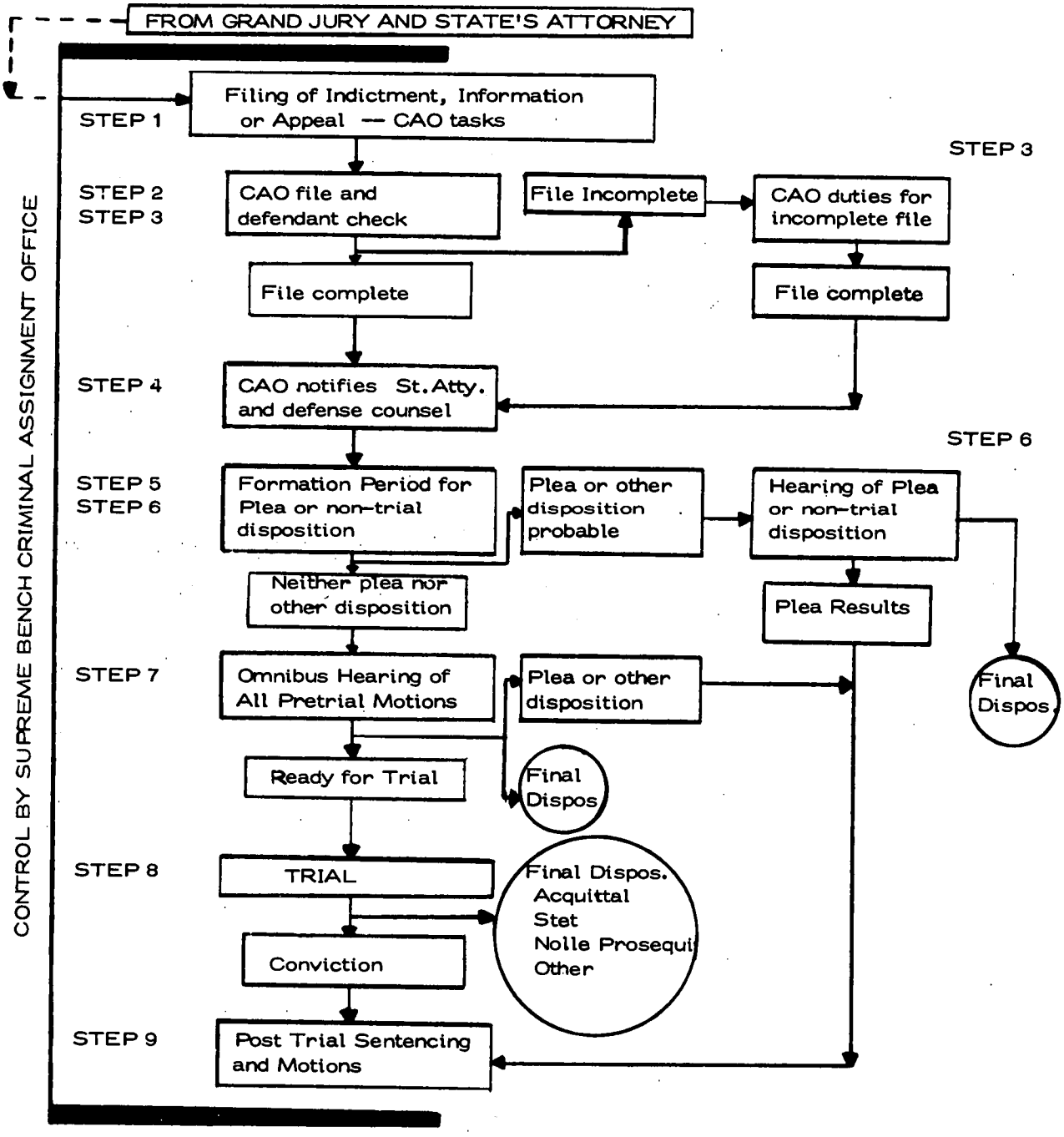
a. Control Procedure for Current Cases

NOTE: These procedures will eliminate in most cases the necessity for a special court appearance solely for arraignment, i.e., solely to notify the defendant that he is charged with certain offenses and obtain his acknowledgment that he understands the charges. However, since Rule 719(a) of the Md. Rules requires arraignment in open court, the initial Criminal Court appearance of the defendant -- be it a plea or disposition hearing, an omnibus hearing, or trial -- will begin with a formal arraignment.

Step 1. New Indictment, Information, Or Appeal Filed With Criminal Court Clerk

Upon filing of a new indictment, information, or appeal with the Criminal Court Clerk, the CAO will receive a copy of the document from the Clerk. The CAO will create a record of the case, to be continuously updated for CAO administrative purposes as the case proceeds. The CAO will also furnish a copy of the indictment or information to the defendant and request a signed acknowledgment of receipt from the defendant on a form supplied by the court. The receipt will be filed

A DIAGRAM OF MAJOR RECOMMENDED STEPS IN CAO CONTROL OF CURRENT CASES*



* These procedures are discussed in the text which follows

with the CAO which will transmit it to the Criminal Court Clerk.

Step 2. CAO File and Defendant Status Check

For each new indictment, information, and appeal, the CAO will check each case file in the Clerk's office to determine whether the file is complete so that the case can proceed.

a. The CAO will check the file for the following:

- The Municipal Court commitment or recognizance
- The acknowledgment by defendant of receipt of indictment or information
- The notice of appearance by counsel
- Determination as to indigency for purposes of appointing counsel*
- Determination as to eligibility for pre-trial release*

b. The CAO will record the defendant's availability and location: whether he is in jail, in the hospital, on pre-trial release or bail, and if on bail, who the surety is.

c. For appeals from Municipal Court, the CAO will inquire of the defendant or his counsel whether the defendant wishes to proceed with the appeal. If no appeal is to be pursued, the CAO will recommend to the CAJ** that the appeal be dismissed on the court's own motion. The CAO will immediately schedule an appearance before the CAJ for this purpose.

d. If the case involves a prayer for jury trial of a misdemeanor, the CAO will inquire of the defendant or his counsel whether the defendant wishes to proceed with a jury trial. If jury trial is to be waived, the CAO will take note of the fact in future scheduling and notify the State's Attorney's Office of the waiver.

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* This information should be noted on the commitment or recognizance.
** "CAJ" refers to the Criminal Assignment Judge.

Step 3. CAO Finds File Incomplete

a. If there is no appearance of counsel in the case, the CAO will notify the Pre-Trial Release Division to interview the defendant for a determination of indigency. Upon receipt of the indigency determination, the CAO will immediately request the CAJ to appoint counsel if the defendant is found indigent. If the defendant is not found indigent, the CAO will notify the defendant that he has five days to retain counsel. If the defendant fails to retain counsel in this time period, the CAO will immediately schedule an appearance before the CAJ where a judicial determination will be made as to whether counsel has been intelligently waived or whether counsel must be appointed despite non-indigency.

b. If the defendant has not acknowledged receipt of the indictment or information, the CAO will take one of the following actions:

- If the defendant is bailed or on pre-trial release, the CAO will require the surety or Pre-Trial Release Division to serve the indictment or information on the defendant, secure an acknowledgment of receipt, and file the receipt with the CAO who will record it and transmit it to the Criminal Court Clerk.

- If the defendant cannot be reached in the above ways, or if the defendant has never appeared in court within 30 days of the date of the indictment or information, the CAO will request the CAJ to order a formal arraignment. If for some reason there is no appearance of counsel in the case, a counsel indigency determination and an appointment of counsel can also be made at this arraignment.

c. If the defendant is jailed and has not yet had a pre-trial release interview, the CAO will notify the Pre-Trial Release Division to interview the defendant, and, if the defendant is found eligible, the Pre-Trial Release Division will immediately request the CAJ to order the release under conditions determined by the CAJ.

Step 4. Prosecution and Defense Readiness Check

If the CAO finds the file complete and the defendant available, it will then notify the Assistant State's Attorney (ASA) and the defense attorney that within the established time limit[5] each must determine whether to request a plea or disposition[6] hearing or an omnibus (motion) hearing, and that if no determination is made by either party within the time limit, a trial date will be scheduled by the CAO under direction of the CAJ after scheduling negotiation.

Step 5. Time Limit for Discovery and Discussion of Plea or Disposition

The CAO will follow court-established time limits for each case to permit the ASA and the defense counsel to conduct discovery[7] and plea or disposition discussions[8]. (For suggested time limits, see subsection (c) below.)

Step 6. Scheduling of Plea or Disposition Hearing

If both the ASA and defense counsel, in response to the CAO readiness check (Step 4), request a plea or disposition hearing, the CAO will schedule the hearing before the CAJ, or, if the CAJ is unavailable, before a designated alternate CAJ. The CAO will notify the following of the scheduled date: defense counsel, the jail if the defendant is jailed, or the surety or Pre-Trial Release Division if the defendant is not jailed. The ASA, defense counsel, and defendant shall appear on the scheduled date for the plea or disposition hearing. Any requests for postponement of the scheduled date for a plea or disposition hearing will be referred by the CAO to the CAJ for resolution.

The result of the plea or disposition hearing will be acdeptance or rejection by the CAJ of an ASA motion for nolle prosequi, no guilty confessed, or stet, or of a defense motion

5 See subsection (c) below

6 "Disposition" as used here refers to a motion by the ASA for nolle prosequi, not guilty confessed, or stet, or a motion by the defense for probation before verdict.

7 See American Bar Association Standards Relating to Discovery and Procedure Before Trial

8 See American Bar Association Standards Relating to Pleas of Guilty

for probation before verdict, or of an agreed-on plea of guilty. If a plea of guilty is accepted by the CAJ, the CAO will follow the sentencing procedures in Step 9 below.

Step 7. Omnibus Hearing[9]

After the CAO's readiness check (Step 4), if either the ASA or the defense counsel wishes to make either a written or oral pre-trial motion, he will file a notice of motion (on a form supplied by the court) with the CAO. The notice will describe the type of motion and the names and addresses of official witnesses (police, medical examiners, chemists, etc.), if any, whose testimony is needed at the omnibus hearing.

Motions requesting a psychiatric examination of the defendant will immediately be set by the CAO for hearing before the CAJ. The CAO will notify the ASA, defense counsel, defendant, and necessary official witnesses of the scheduled psychiatric examination motion hearing.

Other motions will be scheduled by the CAO in the following manner:

a. The CAO receives the notice of motion from the moving attorney.

b. The CAO negotiates with the ASA and the defense counsel to establish a date for the omnibus hearing within the established time period.

c. The CAO notifies the ASA, defense counsel, defendant, and all official witnesses listed on the notice of motion of the scheduled omnibus hearing date, by a confirming subpoena served on such witnesses.[10]

9 The omnibus hearing concept is thoroughly discussed in the ABA Standards Relating to Discovery and Procedure Before Trial, Sections 5.2 and 5.3 and Appendices B, C, and D.

10 The ASA and defense counsel are responsible for service of subpoenas, through the Sheriff or otherwise, on all witnesses other than official witnesses.

d. The CAO schedules the omnibus hearing before a Criminal Court judge. Normally, this judge will hear all matters connected with the case until final disposition. Assignments of omnibus hearings will be distributed among the judges of the Criminal Court (with the exception of the CAJ) in accord with a court-approved assignment system.

e. Requests for postponement made prior to commencement of the omnibus hearing will be referred by the CAO to the CAJ for decision. Requests for postponement made after the hearing has commenced may be allowed to the next court day by the hearing judge. Requests for other postponements will be decided by the CAJ. If the CAJ grants a postponement request, the CAO will then re-schedule the omnibus hearing.

f. The Clerk in each Criminal Courtroom shall check the case file for readiness the day before the scheduled omnibus hearing. If the file is incomplete the CAO will be notified by the Clerk and the CAO will contact parties responsible for file incompleteness.

g. The omnibus hearing will constitute the sole opportunity for hearing of all motions required to be made before trial by Maryland Rules. The defendant will be given an opportunity to plead before and after all motions have been decided. If the ASA and defense attorney wish to proceed immediately with trial before the omnibus hearing judge, the trial will be held if time permits and necessary witnesses are present.

h. After the omnibus hearing is completed, the Courtroom Clerk will notify the CAO that the hearing has been held, and either that the case is ready for sentencing (a plea or conviction having been obtained), or that the case has otherwise been disposed, or that the case is ready for trial.

i. If for any reason the omnibus hearing is not held as scheduled, the Courtroom Clerk will notify the CAO of the reason therefor. The CAO will re-schedule the omnibus hearing and notify the ASA, defense attorney, and necessary witnesses.

Step 8. Trial

In all cases where, within the established time limit after the filing of the indictment, information, or appeal, no notice of motion has been filed with the CAO and no request for a plea or disposition hearing has been made, and in all cases where plea or disposition hearings and omnibus hearings have not resulted in final disposition, the CAO will schedule a trial date for the case.

The CAO will follow these procedures:

a. The CAO will recheck each case file to determine whether all pre-trial motions have received a ruling. Any pre-trial motion not decided at the omnibus hearing will be heard at trial.

b. The CAO will negotiate with the ASA and the defense counsel to set the date for trial within the established time limits, inquire whether there is a prayer for jury trial, and inquire as to the estimated length of the trial.

c. The CAO will reconfirm with the ASA and defense counsel, that there is no possibility at this time of a non-trial disposition of the case, i.e., nolle prosequi, stet, dismissal, or plea of guilty, or probation before verdict.

d. The CAO will assign the case to the judge who held the omnibus hearing in the case if one was held. The CAO will assign cases not having an omnibus hearing among the judges of the Criminal Court (with the exception of the CAJ) in accordance with a court-approved assignment system.

e. The CAO will notify, by subpoena if necessary, the ASA, defense counsel, official witnesses, and the defendant via the jail, surety, or Pre-Trial Release Division of the scheduled trial date.

f. The CAO will carefully follow each case assigned for trial to develop precise trial history data on each case--when the trial began, how long the trial required, whether a jury was requested, and such other data as may be needed.

g. The CAO will confer with each judge to determine the status of pending omnibus hearings, the status of cases pending on trial and cases scheduled for hearing and trial. Based on that conference, and upon the trial history statistics, the CAO will attempt to set the omnibus hearing and trial schedules so that an optimum workload[11] is achieved.

h. A trial will be said to "begin" when the jury is sworn in or the opening statement is made in a non-jury case. Once a trial has begun, the trial judge will decide requests for one-day postponements. If there is a request for a change of the scheduled date prior to the trial date, or if for any reason the trial fails to begin on the scheduled date, the CAO will be notified by the requesting party or the Courtroom Clerk. The CAO will then refer to the CAJ the question of whether a change of date or postponement should be granted. The CAO will perform any necessary re-scheduling and notifying of the ASA, defense counsel, official witnesses, and the defendant.

Step 9. Post-Trial Matters

If a hearing or trial has resulted in a plea of guilty or in conviction, the CAO will schedule and assign all pre-sentencing, sentencing and other post-trial matters such as a motion for new trial to the judge who received the plea or who tried the case.

The CAO will follow these procedures:

a. After plea or conviction, the CAO will be notified by the Courtroom Clerk whether a pre-sentence report has been ordered.

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11 "Optimum workload" as used here means a workload which satisfies established time standards and avoids oversetting and undersetting of cases for trial. Continuous review of trial history statistics by the CAO will be necessary to adjust trial assignment and scheduling for an optimum workload.

b. If a pre-sentence report has been ordered, the CAO will notify the probation department of the time when the pre-sentence report must be filed.

c. The probation department will notify the CAO of each pre-sentence report filed with any judge.

d. The CAO will schedule the date for the sentencing within the established time limit, notify the ASA, probation department, defendant, and defense counsel of the date and arrange for the appearance of the defendant for sentencing.

e. In the event the sentencing hearing is not conducted on the date set, the CAO will be notified by the Courtroom Clerk and the CAO will thereafter re-schedule the procedures and notify the parties.

b. Control Procedure for Backlog Cases

The Supreme Bench should establish a selective judicial management criminal case review system for backlog cases, i.e., cases filed three months or more before the initiation of these procedures. The benchmark inventory in July 1970 indicates the need for such judicial scrutiny. Hearing sessions or special calls should be instituted for such a selective review on a weekly basis. Alternatively, the court may accomplish such a review by massive continuous daily call sessions for a long period. However, the effort needed for the court to prepare and conduct such massive calls has had, in other courts using this system, an undesirable side effect of precipitating a judicial let-down once the major effort is over. A continuous effort over a longer period of time is probably a better approach.

We suggest the following steps be taken for backlog cases.

Step 1. The CAO will undertake review of backlogged cases (appeals as well as indictments). This will consist of a check of the court records and conferences with the State's Attorney's Office and defense attorney to determine the triability of each case. If there is no attorney in the case. the procedures outlined above will be followed for appointment of counsel if the defendant is eligible.

Step 2. The CAO will refer triable cases to the State's Attorney's Office and defense counsel for their consideration of courses of action (plea discussion, motion for nolle prosequi, pre-trial motion, proceed with trial, etc.).

Step 3. If no action is taken by either the defense attorney or by the State's Attorney's Office within the established time period after referral of a triable case, the CAO will schedule a hearing before the CAJ to determine whether any action can or will be taken, and will notify the State's Attorney's Office and defense counsel of the scheduled date of such hearing.

Step 4. When either the State's Attorney's Office or defense counsel is ready to proceed with one of the actions indicated in Step 2 above, the CAO will handle the case under the procedures for current cases and be handled in the same way as a current case.

c. Case Processing Time Limits for Indictments, Informations, and Appeals in Criminal Court.

The function of the following timetable is to serve as the basis for a management exception control system. Current cases should be continually reviewed, by means of an inventory system. The objective of adhering to the timetable is to achieve most case dispositions within 63 court working days (three calendar months), exclusive of time required (if any) for pre-sentence investigation.

Stage No.	Judicial or Administrative Stages	Time Limit (Days)*	Time Cumulative(Day)
1	CAO secures file from Court Clerk, checks file, ascertains defendant availability, and determines defense counsel needs	1	1st
2	CAJ appoints defense counsel	1	2nd
3	CAO serves information/indictment on defendant and secures receipt	1	3rd
4	SAO**-Defense Attorney conduct discovery, discuss pleas and notify CAO of plea/disposition/or trial decision	10	13th
5	CAO schedules hearing and notifies persons	5	18th
6	CAJ holds plea/disposition hearing	1	19th
7	CAO notifies SAO-Defense Attorneys to file motions for omnibus hearing	1	20th
8	SAO-Defense Attorney prepare for omnibus hearing and file motions	10	30th
9	CAO schedules omnibus hearing	2	32nd
10	CAO notifies persons of scheduled omnibus hearing	5	37th
11	Assigned judge conducts omnibus hearing	1	38th
12	SAO-Defense Attorney prepare for trial	10	48th

*The units here are court working days as distinguished from calendar days.

**State's Attorney's Office

(continued on next page)

Stage No.	Judicial or Administrative Stages	Time Limit (Days)	Time Cumulative(Day)
13	CAO negotiates trial date	2	50th
14	CAO notifies persons of scheduled trial date	5	55th
15	Assigned judge conducts trial: 1 day if court trial 2 days if jury trial	2	57th
16	CAO schedules sentences before assigned judge --if no presentence investigation is ordered	5	62nd
	--if presentence investigation is ordered	20	77th
17	CAJ or trial judge sentences --if no presentence investigation	1	63rd (3 months)
	--if presentence investigation		78th (4 months)

PART V: REORGANIZATION AND IMPROVEMENT OF JUDICIAL SERVICE IN THE CRIMINAL DIVISION OF MUNICIPAL COURT

Outline of Part V

V. Reorganization and Improvement of Judicial Service in the Criminal Division of Municipal Court

A. Introductory Note

As explained in Part II above, the recently passed amendment to the Maryland Constitution replacing the lower courts of the state with a unified District Court contains a number of needed changes, but leaves unsolved the basic problem of how the lower criminal court in Baltimore City can be organized for more effective use of judicial resources and supplied with improved supporting services. The text of this report continues to refer to the Criminal Division of the Municipal Court, but it should be understood that what is said here about that court is intended to apply to the Criminal Division of the new Baltimore City District Court after July 5, 1971, when the District Court amendment becomes effective.

No portion of this Report is intended to apply to the Housing Court, which is nominally a portion of the Criminal Division of Municipal Court.

B. Purpose of Reorganization and Improvement

Municipal Court is for most Baltimoreans their first and all-important impression of criminal justice. There appears to be little confidence in the criminal procedure at the Municipal Court stage. This low confidence is reflected not only in the attitudes of the community toward this court, but also in two statistics: the appeal disposition rate, and the "washout" rate. There is presently an unlimited right to an appeal for a trial de novo in the Criminal Court (Md. Ann. Code, Art. 5, Sec. 43). Only about eight percent of convicted defendants appeal their Municipal Court convictions; this percentage is, however,rapidly increasing as present programs of legal defense to the indigent are expanded. Those defendants who do appeal win about 31% of their appeals. The "washout" rate is the percentage of Municipal Court cases which are disposed of by dismissal, acquittal, nolle prosequi, stet, not guilty confessed, or probation before verdict; this rate has increased from 23% in 1965-66 to 31% in 1968-69. (See Appendix A, Section 2 of this Report.)

The defects in the criminal procedure at the post-arrest stage in Baltimore City are not, of course, solely the responsibility of the Municipal Court. Improvements are needed in pre-trial prosecutorial screening and trial prosecution and in the defense area; these are discussed in other sections of the Report. This section is concerned with a reorganization of the Criminal Division of Municipal Court which, we feel, will help to solve the court's problems.

The purpose of considering a reorganization and improvement of judicial service is to promote the objective of early finality, which entails rendering adjudications of a high quality in the first instance, adjudications in which the public has confidence and which rarely result in appeals or collateral attack. Reorganization of judicial service can contribute to early finality if it permits the precious time of judges to be used more effectively and if it facilitates the provision of better supporting services, which the Municipal Court needs. We feel that the reorganization described below will serve both of these purposes under present conditions. However, no reorganization plan should be considered sacred, including the one recommended herein. The organization of Municipal Court should be continually reviewed and altered when necessary, in response to changing conditions.

C. Findings and Conclusions

Our basic conclusion is that there is a need for a partial centralization in Municipal Court: a decreased number of operating courtrooms staffed with judges and supporting court personnel and a centralization of preliminary hearings of cases beyond the court's trial jurisdiction. This conclusion is based on the following findings.

1. Workload imbalance. In 1969 there was an average of 5,419 arrested defendants (15 per day) for all nine courts, ranging from 2,855 (8 per day) in Northern District to 10,410 (29 per day) in Central (See App. A., Sec. 4, and Table 1). Imbalance of this magnitude cannot

be remedied by shifting judges around. We believe that assignment of judges should be flexible, but that generally a judge works most satisfactorily when he can spend a full day in one location. For good management of judicial resources, approximate equality of workload in each court is needed.

2. New service program. A program of greatly expanded and improved court services is needed, and is discussed in Part VI of this Report. We find that the new staff required for such a program can be used most effectively on a "pooled" basis, which means assigning personnel as the need arises from a central location. The common practice of assigning a specific employee to a specific location, regardless of periods of idle time at that location, is very wasteful.

In operating a "pool" of services, it is known that the unit cost of service increases sharply with the number of locations where service must be provided. Thus it is much less costly to provide services at six court locations (which our recommendations specify) than at the present nine locations. By introducing partial centralization of Municipal Court judicial service, the cost of the recommended new service program can be kept at a reasonable level. Some of the new services, such as pre-trial release, will have to cover all nine locations, but others, such as defense counsel for the indigent and in-court social service referral, can be limited to the six locations where courts are in operation.

3. Need for centralization of preliminary hearings in a location near Criminal Court. Our position is that the defendant has a right to a preliminary hearing; it is a matter of basic fairness that there be a prompt judicial determination of the probable cause basis for beginning the criminal process and for depriving a person of his liberty. (See detailed argument in Appendix C.)

Preliminary hearings of cases beyond the trial jurisdiction of Municipal Court should be centralized in a location near Criminal Court, for the following reasons:

a. It is important for the State's Attorney's Office that this stage of the criminal process be handled correctly to develop the case for trial and to reduce the likelihood of post-conviction proceedings. This means that preliminary hearing prosecution must be closely coordinated with pre-trial and trial work in the Criminal Court. Such coordination will be greatly facilitated by the centralization of preliminary hearings in one location near to the Criminal Court, and it is for this reason, among others, that the present State's Attorney is strongly in favor of such centralization.

b. Cases beyond Municipal Court trial jurisdiction often require more intensive services of various kinds than other cases, e.g., pre-trial release investigation (a higher standard would tend to be applied in determining the "releasibility" of felony defendants) and legal defense. Centralization in a location near Criminal Court will make it possible for the pre-trial release and public defender agencies to concentrate resources (manpower) and coordinate with their activities in the Criminal Court.

c. Centralization of preliminary hearings will assist the Municipal Court in administration of this vital judicial function. The law of the preliminary hearing has become more complex in the long series of decisions culminating

in Coleman v. Alabama. To satisfy the increasingly stringent legal requirements, the court needs to give special consideration to preliminary hearings. This can be done by specialization of one court. There is precedent for such specialization; a statute provides that murder and manslaughter cases be heard only in the Central District Court (Md. Ann. Code, Art. 26, Sec. 115).

d. Clerical and recordation requirements are greater for preliminary hearings; a full record (electronic or written) should be made of each such hearing, and the clerical staff involved should be especially skilled. Centralization will assist the court by allowing skilled clerical and recordation resources to be concentrated in one location.

4. Need to respect existing police district and area boundaries. Any reorganization should respect as much as possible these boundaries, which are basic to police administration.

5. Need to avoid total centralization. Total centralization of misdemeanor jurisdiction in Baltimore City requires considerable further study. We cannot consider it as a realistic policy at the present time. If total centralization is adopted as an eventual goal, it will be at least several years before the problems related to providing the necessary space can be solved--site selection, bond issue, construction scheduling, and the like. The effort in this report is to develop improvements which can be effected immediately, and immediate implementation of centralization of misdemeanors is impossible.

6. Authority to reorganize Criminal Division of Municipal Court. The Chief Judge of Municipal Court has the power to redistrict and to reorganize the court. The Maryland Constitution presently provides

as follows.

> "There is hereby created a Municipal Court of Baltimore City... (5)(c) The jurisdiction of said Court shall consist originally of the jurisdiction vested on the day immediately preceding the first Monday of May, 1961, in the Justices of the Peace of Baltimore City, including the Police Magistrates, the Chief Police Magistrate of Baltimore City, the Magistrates at-Large of Baltimore City, and the Traffic Court of Baltimore City, and thereafter shall consist of such . . . or lesser jurisdiction (which may be made exclusive as to any class or types of cases), with such right to appeal therefrom, as the General Assembly shall prescribe from time to time by law. The Chief Judge and the Associate Judges thereof shall have such powers and duties as the General Assembly shall prescribe from time to time by law. The Judges of said Court shall have full power to regulate by rules the administration, procedures and practice of said Court, including but not limited to, the creation of divisions of said Court to hear exclusively any class or classes of cases and the assignment of a particular judge or judges exclusively to such divisions and the vesting of administrative duties in the Chief Judge; such rules shall have the force of law until rescinded or modified by said Judges or the General Assembly. Unless otherwise provided by law all powers granted by this section or by law to said court of the Judges thereof as a body may be exercised by a majority of the Judges thereof. Said Court shall not be a court of Record." (Md. Constitution, Art. IV, Sec. 41C) (emphasis added)

This constitutional power is supplemented by a statute.

> "The Chief Judge, after consultation with the mayor and city council of Baltimore and the police commissioner of Baltimore, shall determine the location of the various parts and divisions of the court for which suitable and proper quarters shall be furnished by the mayor and city council of Baltimore." (Md. Ann. Code, Art. 26, Sec. 124) (emphasis added)

As of July 5, 1971, when the District Court Constitutional Amendment becomes fully effective, the Constitution will give the power of establishing functional divisions of any District Court to the Legislature.

> "The State shall be divided by law into districts...Functional divisions of the District Court may be established in any district." (Md. Const., Art. IV, Sec. 41B, as amended)

Chapter 528 of the Laws of 1970, the implementing statute, will transfer this power to the Administrative Judge of each district.

> "In each district the Chief Judge of the District Court shall designate with approval of the Chief Judge of the Court of Appeals one of the District Court judges as the administrative judge for that district; who shall have the responsibility and authority for the administration, operation, and maintenance of the court in that district and for the conduct of the court's business. Subject to the approval of the Chief Judge of the District Court, the District Court of any district may be divided into civil, criminal, traffic, or other functional divisions if the work of the court requires." (Sec. 143(a))

Our interpretation of the existing and future laws is that the present Chief Judge of the Municipal Court and the future Administrative Judge of the Baltimore City District Court (with the approval of the Chief Judge of the District Court of the State) have full power to adopt the recommended organization.

D. Answers to Arguments Against Any Reorganization

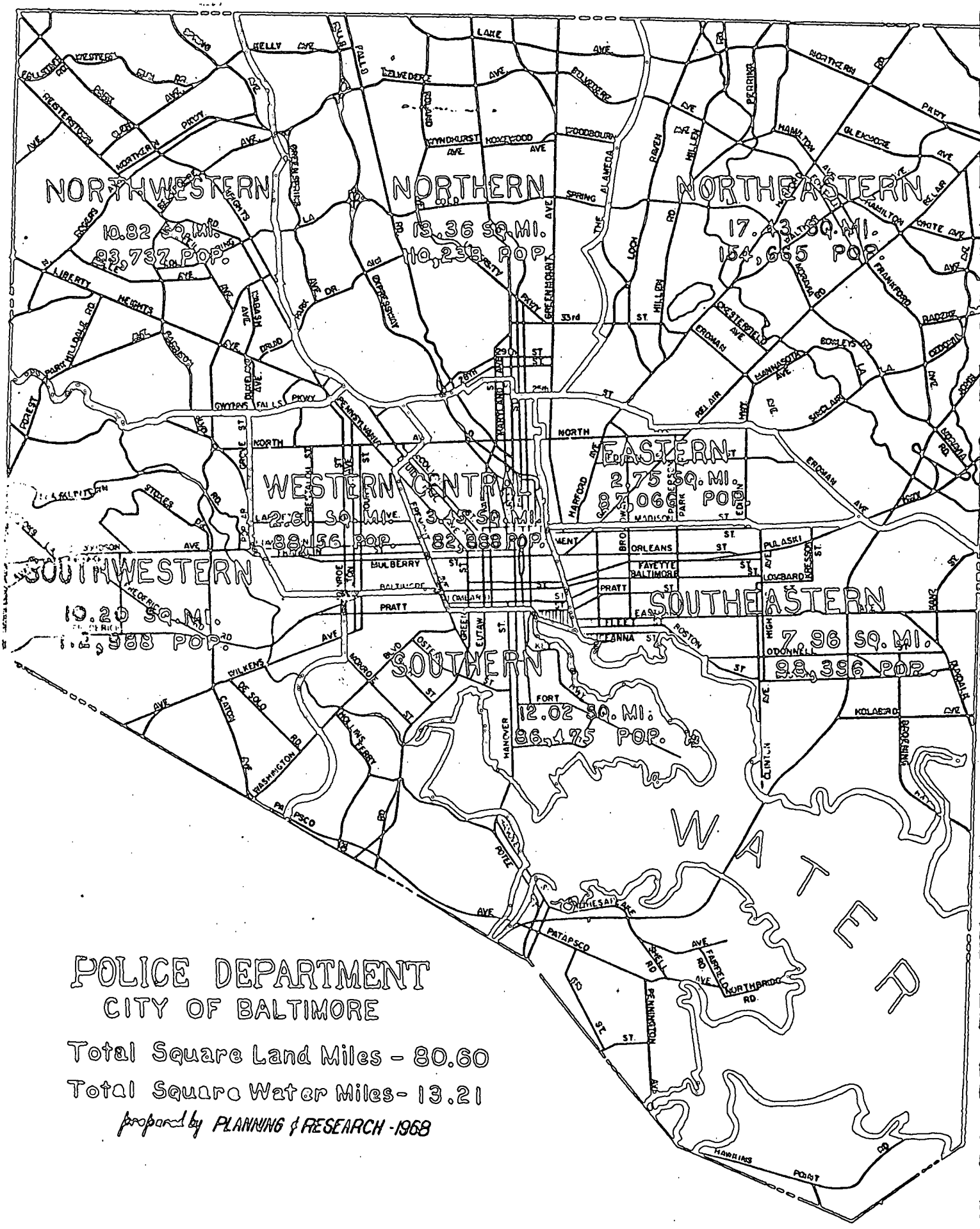
There are several objections which can be anticipated against any sort of reorganization of the Municipal Court and which should be considered here.

1. "Reorganization will be inconvenient for the police." It is true that the recommended reorganization described below will cause the police some inconvenience, but we believe this will end after an

initial period of getting used to the new arrangement. The existing boundaries of police Districts and Areas (there are nine Districts and three Areas, each Area containing three Districts) are fully respected under the reorganization plan. There will be new defendant transportation requirements, but under our recommendations, these will be supplied by the Sheriff and funded by the state.

2. "The neighborhood court should be preserved." We agree with the idea that justice should be easily accessible and rendered on a scale which does not dwarf the individual. However, the partial centralization recommended herein will retain the neighborhood character of the Criminal Division of the Municipal Court. It should be pointed out that these courts are not "walk-in" courts at present; most people go to the courts by car, bus, or taxi. Two of the courts (in the Central and Eastern Districts) are a long way from any habitation.

3. "Judges prefer the present arrangement." This is not true as a general statement. In individual interviews and in group sessions, judges spoke to us of the inefficiencies of the present arrangement. Also, there is strong support among the judges for a program of diversion of cases which primarily involve medical, social, or psychiatric problems; the program of in-court social service referral (proposed in Part VI below) will be facilitated by the recommended reorganization.


NORTHWESTERN
10.82 SQ.MI.
83,732 POP.
NORTHERN
13.36 SQ.MI.
110,238 POP.
NORTHEASTERN
17.43 SQ.MI.
154,665 POP.
WESTERN
2.61 SQ.MI.
88,156 POP.
CENTRAL
3.35 SQ.MI.
82,888 POP.
EASTERN
2.75 SQ.MI.
89,106 POP.
SOUTHWESTERN
10.20 SQ.MI.
POP.
SOUTHERN
12.02 SQ.MI.
86,175 POP.
SOUTHEASTERN
7.96 SQ.MI.
98,396 POP.
WATER
POLICE DEPARTMENT
CITY OF BALTIMORE
Total Square Land Miles - 80.60
Total Square Water Miles - 13.21
prepared by PLANNING & RESEARCH - 1968

E. Recommended Reorganization of Criminal Division of Municipal Court

We recommend that the reorganization plan described in sub-sections (1) through (6) below be adopted for the Criminal Division of the Municipal Court (exclusive of Housing Court) by the Chief Judge of the Municipal Court, and, after July 5, 1971, adopted for the Criminal Division of the Baltimore City District Court by its Administrative Judge.

The recommended reorganization incorporates the following principles which were derived from our factual findings.

- o Workload should be approximately equally distributed among courts
- o Total centralization is not realistic at the present time and should be avoided
- o Existing police district and area boundaries should be respected
- o Preliminary hearings of cases beyond Municipal Court trial jurisdiction should be held in one location near the Criminal Court
- o Procedures must be simple and clear enough so that there is certainty as to the location where the defendant, police officer, and other parties must go for booking, trial, and preliminary hearing

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*In terms of the present jurisdiction of Municipal Court (Md. Ann. Code, Art. 26, Sec. 109 et seq.), this phrase refers to any case not within the trial jurisdiction of Municipal Court, which includes certain misdemeanors and excludes certain felonies which are within the trial jurisdiction of Municipal Court. In terms of the future criminal jurisdiction of the District Court, i.e., under the terms of Chap. 528 of the Laws of Maryland 1970, Sec. 145(b), the class of cases not within the trial jurisdiction of the District Court is equivalent to the class of all felonies.

The reorganization plan, which specifies the locations and times of judicial sittings, is expected to reduce greatly the existing workload imbalance among districts, and, at the same time, preserve certainty and convenience with respect to where the defendant and other parties must go. Presently there is an average low of 8 cases per day and a high of 29 among the nine courts; the recommended plan is expected to produce an average low of 16 non-felony cases per day and a high of 25 non-felony cases among six non-felony courts, with a seventh felony court handling about 17 felony preliminary hearings per day (as will be pointed out below, there will be sufficient judicial manpower to extend the hours of the felony preliminary hearing court if necessary). Table 1 of Appendix A of the Report shows the distribution of workload presently (column 3) and under the reorganization (column 7). It should also be remembered that, if the recommendations of this Report (Part VI and Appendix B) with regard to District Court Commissioners are followed, there will be nineteen of these officers who will, among other things, hear applications for arrest warrants and issue warrants, and that these nineteen officers will considerably lighten the workload of judges. Table 6 of Appendix A indicates the amount of warrant work.

For a full understanding of the reorganization plan, we refer the reader to Appendix B. It concerns precise procedures to be followed in Municipal Court, involving new programs of pre-trial release, counsel eligibility determination, defense counsel for the indigent, and a new policy of informing the defendant of his rights in writing.

The recommendation plan is as follows.

(1) One ccurt in each police area will be closed with respect to judicial sittings except in emergencies, but will continue to be staffed by commissioners so that arrest warrant applications can be heard. The closed courts are in the Northern, Northeastern, and Southwestern Districts; these courts have had the lowest workload of all types (See Appendix A, Table 1). The second courtroom in the Central District building, now unused, will be re-opened and used for preliminary hearings, making a total of seven operating courts rather than the present nine.

(2) The station house facilities and courtrooms in the Northern, Northeastern, and Southwestern Districts will continue to be used, except for judicial service. The jail cells will continue to be used for lockup of defendant;s; booking will continue to occur in the district of arrest; and pre-trial release and counsel eligibility investigations and determinations will take place in the closed courtrooms and judge's offices. Defendants arrested in these three districts will either have preliminary hearings in the new Preliminary Hearing Court (if not triable by Municipal Court), or be tried in the adjacent district designated below.

(3) The re-opened courtroom in Central will handle all preliminary hearings. The six presently operating courts in Central, Western, Eastern, Northwestern, Southeastern, and Southern will handle all other cases, as follows:

POLICE AREA ONE:

Central--Defendants arrested in Central only

Southern--Defendants arrested in Southern and Southwestern

Southwestern--closed with respect to judicial sittings; open warrant applications.

POLICE AREA TWO:

Western--Defendants arrested in Western only

Northwestern--Defendants arrested in Northwestern and Northern

Northern--closed with respect to judicial sittings; open for warrant applications

POLICE AREA THREE:

Eastern--Defendants arrested in Eastern and Northeastern

Northeastern--closed with respect to judicial service sittings; open for warrant applications

Southeastern--Defendants arrested in Southeastern only

(4) All seven courts will be open 9 a.m. to 5 p.m., seven days per week. This means that 3 p.m. sessions will no longer be held. The full day of operation on Saturday and Sunday, rather than the present half day, is necessary, we believe, because of the high number of arrests on Friday and Saturday nights. In scheduling cases, a specific hour should be set and adhered to for the convenience of police and other parties (see recommendations concerning calendar management below).

(5) The additional judge manpower required to staff the new preliminary hearing in court in the Central District and the extended weekend hours in the other six courts will be provided by the manpower saved in suspending judge sittings in Northern, Northeastern, and Southwestern. How much manpower will be saved? Although these three courts have low workloads and do not require as much "on-the-bench" judge time as the other six, our observations and interviews indicate that just as much judge time is involved in each of these three courts as in each of the other six, which is, on the average, about 48 hours per week per court. Thus, by suspending sittings in Northern, Northeastern, and Southweatern, we can save 3 x 48 or 144 judge manhours per week. To provide the eight additional weekend hours in the other six courts (Central, Southern, Western, Northwestern, Eastern, and Southeastern) will require 6 x 8 or 48 of these 144 manhours, leaving 96 manhours for the new felony preliminary hearing court. This will make it possible to operate this new court 13 to 14 hours every day if necessary. (Although this new court is expected to handle fewer cases than the average court [see Appendix A, Table 1, Column 7], some judges believe that preliminary hearings require in general more time than Municipal Court trials. We have no data to confirm or reject this belief, but if it is in fact correct, extending the hours of operation of the preliminary hearing court will allow that court to carry the extra burden.) Alternatively, if the provision of defense counsel to the indigent results in increasing the number of felony charges reduced to misdemeanors

and thus triable in Municipal Court (this is in fact happening with the present interim Legal Aid Bureau Public Defender program), some of the 96 weekly judge manhours can be used to extend the hours of the other court in the Central District where such reduced charges would be tried.

(6) Transportation of unreleased (jailed) defendants from the district of arrest to the district of trial or preliminary hearing will be the responsibility of the Office of Sheriff. Staff and equipment for this purpose will be funded by the state (see financial recommendations in Part VII below).

F. Use of Existing Court Facilities and Future Space Planning

In the above recommendations, Municipal Courts remain in police station houses. This was allowed so that reorganization would not have to wait for the planning of new space for the courts. However, planning should begin now to house the courts separately from the police.

To restore respect for the quality and fairness of justice in Municipal Court, it is not enough to reorganize and improve services; the "police court" atmosphere must be dispelled. Otherwise the suggestion that the police and the courts are in collusion will continue to taint court proceedings. We recommend that future space planning for criminal courts be based not only on past space usage and on projections of future volume, but on the best available thinking about the future pattern of court operations and supporting services and resulting space use. For example, there presently exists no space for prosecutors, public defenders, and pre-trial release; such space will be needed in future facilities.

With respect to the Central station house and courtrooms, there is special urgency with respect to space planning. The existing facility will probably be demolished within two years for highway construction.

G. Recommended Judicial Management of the Reorganized Criminal Division of Municipal Court

The area of judicial management should not be confused with the area of management of criminal court supporting services; the latter is discussed in Part VI below.

1. Administrative Judge of Criminal Division. A second management level is needed in Municipal Court. It has become too large for one Chief Judge, and management control has become attenuated. We recommend that, until the new District Court begins operation (July 5, 1971), the Chief Judge designate an Administrative Judge of the Criminal Division,* who will devote a portion of his time to this administrative function.

2. Responsibility of Administrative Judge of Criminal Division. The responsibility of the Administrative Judge should be to make better use of available judicial time by improving and unifying calendar management and assignment of judges, and to supervise court reporters (recommended in Part VI), court clerks, and record-keeping.

3. Calendar and record management and judge assignment. Calendar management, data management, and judge assignment techniques should be modelled on those developed by the Supreme Bench Criminal Assignment Office. Improvement in record-keeping should

*This follows the organization of the Supreme Bench, where one judge is designated Administrative Judge of the Criminal Court.

begin immediately with the maintenance of an official record of court processing for each defendant. This record should include information about the defendant's identity, offenses charged, date of arrest, dates and outcomes of each court appearance, postponement dates, identity of counsel and prosecutor, and pre-trial release, and information about notification of the defendant of his rights and verification that the defendant understood what his rights were. (The only source of such information on an individual case now is the police arrest record, which is limited in scope, not easily accessible, and difficult to read for the non-policeman.)

H. Court Reporter for All Preliminary Hearings

With the presence of a prosecutor and defense counsel, the preliminary hearing in Municipal Court has become an occasion for sworn testimony, and it is important to preserve a record of such testimony for the trial.

We recommend that the two court reporters be provided to make a written record of all preliminary hearings of cases beyond the trial jurisdiction of Municipal Court. (For costs, see Part VII below.)

In the alternative, we recommend that electronic recording devices be employed if they prove effective in operational tests now being conducted by the Municipal Court.

PART VI: A PROGRAM OF LEGAL AND SOCIAL SERVICES IN THE CRIMINAL DIVISION OF MUNICIPAL COURT AND THE CRIMINAL COURT OF THE SUPREME BENCH

Outline of Part VI

VI. A Program of Legal and Social Services in the Criminal Division of Municipal Court and the Criminal Court of the Supreme Bench

A. Findings and Conclusions

Our investigation has disclosed a need for improved legal and social services in the Criminal Division of Municipal Court, a need for unified planning, budgeting, and administration of legal and social services affecting both Municipal Court and Criminal Court, a need for increased state responsibility with respect to criminal justice in Baltimore City (going beyond the provisions of the recent District Court Constitutional Amendment), and a need to develop a linkage between the city's lower and higher criminal courts.

1. The need for improved services. This Report tends to speak of courts rather than the people they serve. It must be remembered, however, that it is not the courts who are damaged by poor services; it is the people who come before the courts who are harmed. We believe that poorly equipped courts can be as significant a cause of crime and social malaise as inferior housing conditions, deficient schools, or poverty.

a. Prosecution in Municipal Court. An expanded and improved program of trial prosecution and prosecutorial screening of charges is badly needed. The funds for such a program are already provided by a grant of the Governor's Commission on Law Enforcement. Until Summer 1970, when the State's Attorney's Office began regular assignments to Municipal Courts, the judge was forced to act as a

prosecutor, even though the Supreme Bench had held in 1969 that failure by the State to provide a prosecutor makes a trial constitutionally invalid (State v. Mason, Appeal No. 2063-64/1969, Criminal Court of Baltimore City). With respect to post-arrest prosecutorial screening of formal charges, it is apposite to recall the words of Monrad Paulsen quoted in Part III:

> "The very important decision whether to intervene in a man's life with a criminal proceeding ought not to be left, it is widely felt, to the judgment of a single human being whose actions are not often reviewed." (Mass Production Justice and the Constitutional Ideal, C. H. Whitebread, Ed., The Michie Co., 1970; p. xi of Foreword)

The "single human being" to whom Dean Paulsen refers is, of course, the police officer. In the Municipal Court, the police officer decides, virtually without prosecutorial assistance, what the formal charge against the defendant will be. This exercise of unreviewed discretion by the police officer gets the criminal process off to a bad start. Without effective prosecutorial screening at the post-arrest stage, a case with little support in evidence or a case whose charges are overstated (an example of overstating is charging a felonious assault when the evidence supports no more than a common assault) will proceed to the Municipal Court judge. There, such a case, if not transferred to Criminal Court, will probably be "washed out," i.e., dismissed or

otherwise disposed of without trial or plea of guilty.* If the case is transferred to Criminal Court, where there is at present a limited program of prosecutorial screening at the pre-presentment stage, it may be eliminated or reduced and remanded at that point; in our judgment, however, this screening is too little (since it only affects cases transferred to Criminal Court) and comes too late in the process. The case which should have been screened out is added to the burden of the lower court, and the defendant, who should have been discharged at his first court appearance or handled on lesser charges, is undoubtedly adversely affected. Another result is disappointment and frustration of the other participants in the process--police, defense attorneys, witnesses--who have been led to expect a trial of the case.

The conclusion is that action by the prosecutor at an early stage to review all arrests and charges is necessary in order to reduce the "washout" caseload of the courts and permit the judges to concentrate on adjudication of non-trivial cases.

b. Defense counsel for the indigent. Both criminal courts, especially Municipal Court, need an improved program of defense counsel for the indigent. As a result of the U. S. Supreme Court decision in Coleman v. Alabama (___U.S.___, 26 L.Ed.2d 387 (June 22, 1970)),

*The percentage of cases which are dismissed, nolle pros'd, not guilty, confessed, and otherwise disposed without trial or plea of guilty, has been rising sharply in both criminal courts in recent years. In Municipal Court, the percentage has gone from 23% in 1965-66 to 31% in 1968-69. See App. A, Sec. 2 of this Report and Table 5.

an interim program has been provided for felony preliminary hearings* in Municipal Court, to supplement the existing program of appointed private counsel in Criminal Court. In our view, the need goes considerably beyond this new supplementary program (see detailed recommendations in Appendix C). The Court of Appeals (Manning v. Md., 237 Md. 349) held in 1965 that Rule 719 (b), which requires counsel for indigent defendants charged with certain serious crimes (such indigent defendants constitute at least 30% of the yearly total), applies to Municipal Court. Furthermore, the Coleman holding and other authority (see Appendix C), make the conclusion inescapable that determination of indigency for publicly provided defense counsel must occur prior to the first court appearance, and that counsel must be present at this appearance.

It is obvious that legal defense service in the Criminal Division of Municipal Court presently fails to satisfy the requirements of Rule 719(b) and other applicable law. The present interim Legal Aid Bureau public defender program has represented about 506 defendants whose cases were disposed of in 66 days of operation, which (if extended) amounts to about 2,800 defendants per year. Our best estimate of the number of eligible indigent defendants per year in Municipal Court is 15,000 (see Appendix C). It is therefore clear that a large number of indigent defendants in that court do not have counsel. The defendant is usually asked--perfunctorily--whether he wishes appointed counsel, but no effort is made to explain fully to the defendant what his rights are. The

*In fact, the program also serves misdemeanor defendants in Municipal Court.

acceptance of waiver of counsel is automatic. Furthermore, without an adequate pre-trial release program, jail detention is a likely consequence of a postponement to obtain counsel, and tends to deter defendants from exercising their right. (The waiver standards recommended in this Report are those of the American Bar Association; see Appendix B, Section 1.)

c. Pre-trial release and counsel eligibility determination. The Maryland statutory policy (see Md. Ann. Code, Art. 27, Sec. 638A) of pre-trial release on recognizance based on a determination of likelihood that the defendant will appear in court when required, and of "relying upon criminal sanctions instead of financial loss to assure the appearance of an accused person" is not being effectively implemented at the present time. The present program provides for interviews of too few individuals at too late a stage in the criminal process. Our detailed findings and recommendations are in Appendix B.

d. Medical, social, and psychiatric services in Municipal Court. Many defendants in Municipal Court are not charged with serious crimes, but do have serious medical, social, or psychiatric problems. The formal criminal process is inappropriate for such defendants. The need, as some judges have described it in interviews, is for a staff of service referral personnel, who can identify problems of this type and advise judges concerning available community programs to which such defendants can be referred. The basic instrument for such referral is

the judges' power to impose participation in a medical, social, or psychiatric service program as part of a probation sentence (after verdict, or, with the defendant's consent, before verdict), with the option of proceeding with the trial or revising the sentence if the referral is not successful.

In addition to criminal defendants with medical, social and psychiatric problems, the Municipal Court, an accessible, neighborhood court, attracts many persons who come with complaints which are essentially outside the criminal process: domestic disputes, feuds between neighbors, and the like (see Appendix A, Section 3). These persons should not be turned away or forced to translate their problems into inappropriate legal actions.

If an adequate system of community services can be developed, the Municipal Court social service referral staff can eliminate a considerable amount of the judges' time now spent in handling applications for warrants and informal proceedings and can assist the judges' response to defendants with medical, social, or psychiatric problems. The area of development of community medical, social, and psychiatric services is beyond the scope of this Report, but it is known that efforts are underway in Baltimore City to increase the range of available programs of the following types:

- o Family and juvenile counseling
- o Drug addiction and alcoholism treatment
- o Psychiatric treatment, especially for chronic sex offenders and assaultive persons
- o Employment counseling, training, and job placement

e. Post-conviction probation service. The Supreme Bench of Baltimore City has its own Probation Department, created in 1931 by the Legislature, funded by the City of Baltimore, and responsible for adult criminal probation supervision, pre-sentence investigation, and support payment collection. Subsequent legislation (Md. Ann. Code, Art. 41, Sec. 24) provided that the State Department of Parole and Probation would supervise the probationary status of any person for the Circuit Courts of the state, the Supreme Bench of Baltimore City, or of any court of limited jurisdiction, when so requested by the court. The State Department now provides this service to all courts in the state except the Supreme Bench, which has never requested it; in other words, the Supreme Bench is the only court in the state whose probation service is locally managed and funded.

Municipal Court probation (adult criminal probation supervision and pre-sentence investigation), on the other hand, is supplied by the State Department of Parole and Probation. It is generally acknowledged that

the service is inadequate, and the State Department is currently planning expansion and improvement.

Since the lower and higher courts of Baltimore City are, in effect, part of a continuum of criminal justice, it is anomalous that the probation services of the two courts continues to be planned, budgeted, and managed separately. Subsections 2, 3, and 4 below argue strongly for a joint administration of probation in the city. It is also advisable, in the judgment of the study group, to administer Baltimore City probation jointly with that of the rest of the state. Baltimore City probation constitutes such a large portion of probation service in the state that it is difficult or impossible to intelligently plan, budget, and manage a statewide probation service without including Baltimore City. The Supreme Bench Probation Department had a total active criminal adult caseload of 2260 persons as of June 30, 1969 (which is rapidly increasing); the State Department of Parole and Probation had 5338 persons as of June 30, 1969. The State Department collected only $2.96 million* in 1969 from about 5000 outstanding pay orders, while Supreme Bench probation collected $9.09 million from about 38,000 pay orders.

2. The need for unified administration of court supporting services. Baltimore City has special problems in criminal justice, as evidenced by the fact that, in the year ending August 31, 1970, its share of the statewide total of criminal cases processed was 56% (63,371 out of

*This figure includes fines and work-release prisoner payments as well as support payments.

114,141). The services mentioned above are needed nowhere in the state as badly as in Baltimore City. These services are quite expensive, requiring a highly paid professional staff. For the most effective use of resources, these services should be administered on a unified basis, combining existing and new programs in both Municipal Court and Criminal Court. Otherwise, administration will be fragmented and considerable waste of resources through overlap will occur. For example, the new program of in-court social service referral described above should be integrated with the present Supreme Bench program of medical and psychiatric examination so that the new program can benefit from the expertise of the existing program. Pre-trial release and counsel eligibility determination, which span both courts, should be run as one program. The same is true of defense services for the indigent. If a defendant is found eligible for pre-trial release or publicly provided counsel in the lower court and then is transferred to the higher court, it is essential that there be continuity of pre-trial release supervision and of legal representation. Rule 719(b) imposes stringent requirements regarding continuity of counsel:

> "When ccunsel is appointed by the court to represent an accused, the authority and duty of such counsel shall continue in all respects from the date of such appointment until the imposition of sentence. Thereafter counsel shall advise the accused concerning his right to appeal and his right to apply for a review of his sentence..." (Md. Rules, Rule 719(b)(6))

The same need for continuity from the lower to the higher court exists with respect to probation service. The existing Supreme Bench criminal probation program should be administered jointly with an expanded program in Municipal Court.

3. The need to increase state responsibility for criminal justice in Baltimore City. The State of Maryland has a special interest in criminal justice in the city, since the bulk of the crime problem is concentrated there. It is essential that the state assume increased responsibility for the administration of justice in Baltimore City, and that the state bear an increased part of the burden of the city's criminal justice costs. As Part VII of this Report shows in detail, Baltimore City is paying more to finance its state courts than any county in the state, and the state is contributing less in Baltimore City than elsewhere in the state to finance such courts. The complex structure of criminal justice financing in Baltimore City needs to be rationalized and simplified so that intelligent, comprehensive budget planning can be conducted. At present, the state and the city divide revenues and expenses in different ways for each court, and the same is true of the Police, State's Attorney's Office, Clerks, Sheriff, and probation service. Rational, comprehensive budget planning for criminal justice in Baltimore City can best be done by the State Judiciary Department. (See Part VII of this Report.)

4. The need to improve the linkage between Municipal Court and Criminal Court. Although constitutionally separate, the city's lower

and higher criminal courts are interdependant (see Appendix A for the statistical relationship). As a long range goal, it may be necessary to consider formal constitutional merger of the two courts; this will require further study, however, and is beyond the scope of this Report. We find, however, that in order to bridge the gap between the two courts--which are at present virtually treated as two different worlds--it is necessary to begin now with joint administration of certain court supporting services.

The District Court Constitutional Amendment is, in our view, a necessary step toward more comprehensive court administration. As amended, Article IV of the Constitution will provide for two separate, "horizontally" integrated court systems in the state, and it does not preclude the Chief Judge of the Court of Appeals from employing his administrative power to begin to link the administration of certain court services in the lower and higher criminal courts of Baltimore City (and perhaps elsewhere), nor does it prohibit the study of court merger in the future.

We find that present constitutional and statutory power is adequate for the unified administration by the State Judiciary Department of court supporting services in both criminal courts of Baltimore City, including such programs as pre-trial release and counsel eligibility determination, in-court social service referral, and medical and psychiatric examination. Our interpretation of the law is as follows. Even without the recent District Court amendment, which removes all doubts, the State Constitution makes

the Municipal Court of Baltimore City subject to the supreme administrative power of the Chief Judge of the Court of Appeals; this is sufficient to create an office to administer court supporting services for both criminal courts of Baltimore City. Read by itself, the Municipal Court Admendment to the Constitution passed in 1961 (Art. IV, Sec. 41C) would appear to set up an autonomous court, administered by its judges, separate from the Circuit Courts, with jurisdiction prescribed by the Legislature. However, amendments to the Constitution adopted in 1966, and re-enacted language, have the effect of bringing the Municipal Court into the "judicial system of the state" and thus under the administrative power of the Chief Judge of the Court of Appeals. (The rules passed by the Chief Judge are, however, subject to repeal or amendment by the Legislature.) Art. IV, Sec. 1 includes in the "Judicial power of this State . . . such courts for the City of Baltimore are as hereinafter provided for"; our interpretation of the latter is courts provided for in later sections of Art. IV, including Municipal Court. Art. IV, Sec. 18A makes the Chief Judge of the Court of Appeals "the administrative head of the judicial system of the state," and gives his court rule-making power "in the appellate courts and in the other courts of this state, which shall have the force of law until rescinded, charged or modified by the Court of Appeals or otherwise by law." As administrative head of the judicial system, the Chief Judge has broad powers. Although the Legislature has created the Administrative Office of the Courts and a Director of that office with certain powers (Md. Ann.

Code, Art. 26, Sec. 6, 7, 8), the Chief Judge may, by rule, extend these powers of administration, subject always to repeal or amendment by the Legislature.

B. Recommendations.

The recommendations consist of organizational concepts, which relate to the long-range development of criminal justice in Baltimore City, and specific recommendations for immediate action.

1. Organizational recommendations. We recommend a phased transfer to the state, employing existing judicial and legislative power, of the responsibility for planning, funding, budgeting, and managing certain criminal court services. We recommend that the responsibility for criminal probation in the Criminal Court be transferred to the state Department of Parole and Probation, pursuant to existing law (Md. Ann. Code, Art. 41, Sec. 124), and that criminal probation in both Criminal Court and Municipal Court be administered jointly by this state agency. We recommend that the Chief Judge of the Court of Appeals, under his existing authority, create an Administrative Officer of the Eighth Judicial Circuit, who will serve under the direction of the Director of the (State) Administrative Office of the Courts. We recommend that this officer be made exclusively responsible for administration of all programs, in both the Municipal Court and Criminal Court of Baltimore City, of pre-trial release and counsel eligibility determination, in-court social service

referral, and court-related medical and psychiatric examination described in Part VI, Section 2, Part VII, and in Appendix B of this Report. We recommend that the Chief Judge of the Court of Appeals submit to the Governor a budget for such programs consistent with the recommendations of this report, to be included in the State Judicial Budget. We recommend that, pending the appropriation of state funds for these programs, interim funding from the Governor's Commission on Law Enforcement and the Administration of Justice be sought.

The specific recommendations below describe the first phase of transfer of responsibility to the state. The first phase involves funding of certain programs by the state and administration (planning, budgeting, and managing) of certain programs by the state. The state-funded programs are defense counsel for the indigent, medical and psychiatric examination, pre-trial release and counsel eligibility determination, transportation of jailed Municipal Court defendants (to be performed by the Sheriff but funded by the state), criminal probation, and in-court social service referral. (All of these funded programs are to extend to both Municipal Court and Criminal Court, except for defendant transportation, which is necessitated by our recommended judicial reorganization of Municipal Court and is therefore limited to that court, and the in-court social service referral program. The latter we view as a resource primarily for the Municipal Court prosecutor and judge, but one which the Criminal Court judge may want to make use of.) The state-administered programs

are medical and psychiatric examination, pre-trial release and counsel eligibility determination, referral to medical, social, and psychiatric services, and criminal probation--all affecting both courts. With the exception of criminal probation, these programs are to be administered by the State Judiciary Department through the Administrative Office of the Eighth Judicial Circuit whose creation is recommended below. Although criminal probation is arguably judicial in nature, the State Department of Parole and Probation should, in the judgment of the study group, administer criminal probation in both criminal courts of Baltimore City. This judgment is based on the demonstrated capability of the Department and its readiness to redefine its role in Baltimore City. The responsibility of the State Department should be, therefore, to jointly administer a greatly upgraded probation program in Municipal Court (soon to be integrated with other lower courts of the state by the District Court Constitutional Amendment) and the present probation program of the Supreme Bench. Assumption of the latter responsibility should begin with Supreme Bench adult criminal probation supervision and pre-sentence investigation, and, after preliminary planning (because of the magnitude of Supreme Bench support collections), extend eventually to the support payment collection function of the Supreme Bench.

The later phases of transfer of responsibility for criminal court supporting services to the state require extensive further study and are therefore not included in the detailed recommendations below. It is important to emphasize that we have recommended the creation of the Administrative

Office of the Eighth Judicial Circuit not only as a means of unified administration of pre-trial release and the rest of the service program described in the detailed recommendations below, but also as a device to improve the linkage between the two criminal courts of Baltimore City. This office has a prospective role. As a state judicial agency administering services jointly in both courts, it will be the logical organization to which to transfer responsibility for supporting services affecting both criminal courts. A study of the desirability of further transfer of responsibility should be undertaken at the earliest possible moment. We recommend that the study consider the following possibilities.

- The possibility of constitutionally ending the elective status of the Office of Sheriff, and of making that office and its functions subject to the administration of the Administrative Officer of the Eight Judicial Circuit. The functions now performed by the Office of Sheriff include the following vital court supporting services: defendant and prisoner transportation, service of process, execution of arrest warrants, and collection of fines.

- The possibility of constitutionally ending the elective status of the Clerks of both criminal courts, and of making those offices and their functions subject to the administration of the Administrative Officer of the Eighth Judicial Circuit.

- The possibility of placing such ancillary functions as courtroom security and court reporting under the administration of the Administrative Officer of the Eighth Judicial Court.

With respect to the elective offices of Sheriff and Clerk, we believe it is possible to give, by legislation, some supervisory power over their activities to the Administrative Officer of the Eighth Judicial Circuit. This is an important subject for future study.

2. Specific recommendations for immediate action. Estimates of all costs are provided in Part VII of the Report.

a. Prosecutorial screening of charges and trial prosecution in Municipal Court. The program already funded by the Governor's Commission on Law Enforcement places prosecutors in the Municipal Courts, but this plan needs revision to conform with the recommendations of this Report--specifically, with the judicial reorganization of Municipal Court, and with the recommended emphasis on screening of formal criminal charges at the post-arrest stage.

We recommend that a total of twenty prosecutors be provided for Municipal Court, plus necessary supporting personnel. One prosecutor should supervise and would have the responsibility for assigning prosecutors from the "pool" of nineteen to the seven Municipal Courts on an "as-needed" basis. This will provide five prosecutors to give each of the three lower workload courts one 56-hour-per-week position, and fourteen to give each of the four higher workload courts two 56-hour-per-week positions. (For the seven courts, see the reorganization recommended in Part V.)

The Municipal Court prosecutors should carefully screen all arrests and prepare formal charges in conjunction with the arresting officer and desk sergeant. The objective should be to reduce the "washout rate," i.e.,

the percentage of cases which are dismissed, nolle prosequi, and otherwise disposed of without trial or plea of guilty, and permit concentration by the trial prosecutor and judge on non-trivial cases. The screening prosecutor should also be alert to the possibility of using the assistance of the community service coordinator (see description below) before the formal charge is drawn.

b. Defense counsel for the indigent in Municipal Court and Criminal Court. The recommended program, including staffing and estimated cost, is described in detail in Appendix C of this Report. Administration of the program would be the responsibility of an independent board of trustees.

c. Pre-trial release and counsel eligibility determination in Municipal Court and Criminal Court. The recommended program, including staffing and estimated cost, is described in detail in Appendix B of this Report. The main features are a staff of investigators, for pre-trial release and indigency investigation, and pre-trial hearing officers. Besides issuing arrest warrants, these officers--called commissioners in the new District Court--will make preliminary release and counsel eligibility determinations, to be later reviewed by a judge. The goal of the program will be to investigate, at the post-arrest stage, all arrested defendants for pre-trial release, and all assertedly indigent defendants charged with Rule 719(b) offenses for eligibility for publicly provided defense counsel. The emphasis of the recommended program is on Municipal Court, but it adequately covers Criminal Court

and City Jail. The legal basis of the program is Rule 719(b) of the Maryland Rules, the Coleman decision by the U. S. Supreme Court, and the American Bar Association Standards Relating to Pre-Trial Release. Administration of the program will be the responsibility of the new Administrative Officer of the Eighth Judicial Circuit (recommended below).

d. In-court medical, social, and psychiatric referral service (primarily in Municipal Court). We recommend the commencement of a new program of in-court referral service, focussed primarily on the Criminal Division of Municipal Court. The new program should consist of a staff of ten community service coordinators plus one supervisor and supporting personnel. The ten coordinators will provide an average of 48 manhours of service per week to each of the seven courts (under the recommended judicial reorganization), and should be assigned from a central "pool" on an as-needed basis. We further recommend that the prosecutor and judge make full use of the coordinators, whose job it will be to identify defendants who can appropriately be referred to community service programs, and to advise on the possibility of such referral. In the preparation of the formal charge and in trial activity, the prosecutor should consider social service referral alternatives suggested by the community service coordinator. The judge should make use of his power to impose a probation sentence (after verdict, or, with the defendant's consent, before verdict) with the condition that the defendant participate in a particular medical, social, or psychiatric

program. If the participation is not successful, the judge has the option of proceeding with the trial or revising the sentence.

e. Administrative Officer of the Eight Judicial Circuit. The Chief Judge of the Court of Appeals, under his present authority, should appoint an Administrative Officer of the Eight Judicial Circuit. The Administrative Officer of the Eighth Judicial Circuit should have the power to plan, budget, and administer selected services in both the Municipal Court and the Criminal Court of the Supreme Bench. These services should include the following:

(1) Pre-trial release investigation and determination and supervision of releasees in both Municipal Court and Criminal Court.

(2) Determination of eligibility of defendants for publicly provided defense counsel under Rule 719(b) of the Maryland Rules in both courts (described in (c) above).

(3) Medical and psychiatric examination services presently provided by the Supreme Bench to both courts.

(4) In-court referral service, available at all Municipal Courts, to community medical, social, and psychiatric programs (described in (d) above).

The Administrative Officer of the Eighth Judicial Circuit should conduct the formal planning and budgeting with respect to the services he administers. He should submit to the Director of the (State) Administrative Office of the Courts a yearly budget, which, as modified and approved by the Director, should be included in the state Judicial budget submitted to the Governor and General Assembly, and should publish periodic reports of the effectiveness of programs under his direction.

f. Criminal probation in Municipal Court and Criminal Court. We recommend that the State Department of Parole and Probation assume the responsibility for joint administration of the existing adult criminal probation service of the Supreme Bench and a greatly upgraded program of criminal probation service in the Criminal Division of Municipal Court. (Probation service, as defined here, includes pre-sentence investigation and supervision of sentenced probationers; it does not include pre-trial services.) In the procedures regarding the assignment of probation officers to courts, provision should be made for transferring a probation officer out of a court if the judge finds his performance inadequate. We further recommend that the State Department of Parole and Probation plan for eventual assumption of the support payment collection and disbursement functions now performed by the Probation Department of the Supreme Bench. Detailed staffing plans for upgraded Municipal Court probation should be provided by the State Department of Parole and Probation, which is currently in the process of reviewing its role in the Municipal Court.

PART VII: FINANCIAL ANALYSIS AND RECOMMENDATIONS

Outline of Part VII

Part VII: Financial Analysis and Recommendations

A. The State Should Assume a Larger Share of Financing Criminal Justice in Baltimore City

The programs recommended in this Report, plus the transfer of the Municipal Court to the state (where it will become the Traffic and Criminal Divisions of the new Baltimore City District Court), will require an increase in net state expense of approximately $1.7 million for the operation of the Traffic and Criminal Divisions of the District Court and of recommended new "shared" programs* affecting both this court and the Criminal Court of the Supreme Bench. This additional expense is a result of an increase of about $0.28 million mandated by the District Court Act (Chap. 528 of the Laws of Maryland 1970), plus an increase of about $1.76 million for shared programs, minus about $0.54 million for increased state revenues (criminal fines of District Court), totalling about $1.7 million (see Tables 3, 6).

Basic fairness and equitable treatment of taxpayers of Baltimore City require at this time an increase in the State's contribution to criminal justice costs. It is not necessary to discuss state funding of the lower criminal court in Baltimore City the District Court Act has already made the state completely responsible for that court,which is now and has been primarily a state-funded operation and which is and will continue to be a source of net revenue for the state.**

* See Table 3 for an itemization of "shared" programs.

**The net revenue to the state, excluding shared programs, is estimated at $0.8 million for FY 72.

The bulk of the statewide crime problem is concentrated in Baltimore City, and yet the state's financial responsibility is less in the city than in any of the counties. This inequity can be measured in a number of ways.

(1) The percentage of state support of the Supreme Bench is the smallest of any of the 24 subdivisions -- only 14%. The reason for this is that the state's support only covers judicial salaries, and the expensive services (probation, etc.) required for the criminal caseload in the Supreme Bench constitute a high proportion of its budget compared to the other subdivisions. Although only 8 of 21 judges are assigned to it, the Criminal Court accounts for 53% of total Supreme Bench expenses.

(2) The per case cost for the Eighth Circuit (Supreme Bench) is $166, which is very high compared to the statewide Circuit Court average of $132 (1968-69 data).

(3) The Circuit Court cost per capita in the city is $5.09, compared with $2.33 statewide.

(4) There are 1301 terminated Circuit Court cases and appeals per judge in Baltimore City, compared with 738 in the 23 counties.

(5) Baltimore City has the highest number of cases per thousand residents; there are 30.5 cases per thousand in the city and 17.7 statewide (1968-69 Report of the Administrative Office of the Courts; 1970 Census).

(6) Revenue for Criminal Court only amounts to 39% of its expenses ($605,915 out of $1,564,724); the city pays 60% of the remaining costs.

(7) The local appropriation for the entire Supreme Bench in FY 70 was $3.9 million; the local appropriations for <u>all other</u>

Circuits combined was only $3.5 million.

(8) The city now pays for Supreme Bench probation, making this court the only Circuit which does not have probation service provided by the state (Department of Parole and Probation). The court has a right to request this service; see Md. Ann. Code, Art. 41, Sec. 124.

(9) The city is required to pay for court-supporting agencies, such as the Sheriff's Office, which are entirely state controlled and whose budgets are set entirely by the state. (The Sheriff's Office currently costs about $550,000 per year.)

B. Criminal Justice in Baltimore City Requires a Higher Level of Funding than It Presently Receives

The need for a higher level of funding can be clearly seen from an analysis of the inadequacy of certain essential criminal court services. This inadequacy and recommended programs to remedy it are addressed in Parts V and VI of this Report, and the cost of the improved ("shared") programs is dealt with in Section D below and in the tables which follow.

The need for higher funding can also be seen in the disparity between the city and the rest of the state with respect to criminal justice expense. This disparity is especially great with respect to the Municipal Court. In that court in FY 70, the actual cost per disposed case (including criminal and traffic) was $3.84. In the courts of limited jurisdiction in the 23 counties, the cost per disposed case (including criminal, traffic, and

civil) was $12.02. The number of cases per judge in Municipal Court (including traffic and criminal) was 28,553, and in the courts of limited jurisdiction in the 23 counties only 1,964* (including criminal, traffic, and civil).

There is also a disparity between the funding of the courts of Baltimore City and that of other law enforcement agencies. In the period 1967-1971, the police budget increased by 107% and the State's Attorney's Office budget increased by 108%; in contrast, the judicial budget grew by only 53%. Judicial expense accounts for only about 8% of the total Baltimore City Public Safety budget of about $69.1 million (this includes Sheriff, State's Attorney, Jail, and Police, as well as Supreme Bench and People's Court).

C. Need for Unified Budgeting and Planning of Criminal Justice in Baltimore City

Perhaps the strongest argument for an increase in state responsibility for criminal justice in Baltimore City is that only the state can unify the judicial budgetary process and rationalize the planning of this vital function. The first step, which is recommended in Part VI of this

* A figure of 144 judges and trial magistrates was used to obtain this result; this does not include committing magistrates.

Report, should be the creation of an Administrative Office of the Eighth Judicial Circuit within the State Judiciary, to be responsible initially for the planning, budgeting, and management of selected supporting services affecting both criminal courts: pre-trial release and counsel indigency determinations, medical and psychiatric examination, and in-court social service referral. The next step we recommend is to include all judicial functions in the state judicial budget for comprehensive, rational planning, and for maximum accountability to the public, and to appropriate for such functions out of general state funds rather than from local sources or special funds.

1. The present state judicial budget.

This budget is prepared by the (state) Administrative Office of the Courts, approved by the Chief Judge of the Court of Appeals, submitted by the latter to the Governor who may adjust it, and then submitted by the Governor to the General Assembly. That body is precluded by the Maryland Constitution, Art. III, Sec. 52(c), from acting to reduce it. The reason, of course, is to protect the independence of the judiciary. In practice, this budgetary process does not afford full protection because so much of the expense of the state judiciary is excluded from it. The budget includes the Court of Appeals, Court of Special Appeals, Administrative Office of the Courts, Circuit Court judges' salaries, and small additional amounts for

judicial conferences and reporting. It does not include the courts of limited jurisdiction, such as Municipal Court. It does not include the various Clerks' and Sheriffs' Offices, adult and juvenile probation, or Circuit Court expenses other than judges' salaries. The exclusion of courts of limited jurisdiction has put them in a particularly poor position with regard to accountability to the public and rational budgetary planning. Traditionally, these courts are funded from local sources and special allocated funds consisting of motor vehicle revenue and traffic fines and "court costs" collected by the court and remitted to the Department of Motor Vehicles. Clearly, it is necessary to identify all judicial expenses in a budget submitted by the Chief Judge of the Court of Appeals, the administrative head of the state judiciary. The creation of the statewide District Court presents the ideal opportunity to begin to include the lower court budget in the document prepared under the direction of the Chief Judge of the Court of Appeals.

2. Disadvantages of special funds.

The courts of the state in general, especially the courts of limited jurisdiction such as Municipal Court, have been forced to a large extent to depend on funding from special funds and allocated revenues such as "court costs". With the inception of the new District Court, we recommend that

the lower courts be funded out of general funds rather than special funds. The functions of these courts are a general obligation of government. The need -- especially of Municipal Court -- for improved services should not be tied to the intake of "costs" and fines by the courts.

D. Present and Recommended Future Costs and Revenues of Criminal Justice in Baltimore City

In Tables 1 through 6 which follow, we have summarized the most accurate available data on costs and revenues in both the Criminal Court of the Supreme Bench and the Municipal Court (the future Criminal and Traffic Divisions of the new District Court), showing the state and city share of each item. Present (usually FY 71) costs and revenues are compared with those expected in FY 72 based on the assumption that the recommended programs of this Report are implemented and that our expectations regarding legislative funding of the Baltimore City District Court are approximately correct.

Expenses are presented in three ways: those exclusively for Criminal Court (Table 1); those exclusively for Municipal Court (Table 2) and those pertaining to "shared" service programs affecting both courts (Table 3). The programs identified as "shared" need some explanation.

(1) Pre-trial release clearly affects both courts under our recommendations (see Part VI and Appendix C of this Report).

(2) Criminal probation (pre-sentence reports and probation supervision) at the Criminal Court level is in a sense "shared", because we have recommended that it be performed, along with Municipal Court (District Court) probation, by the State Department of Parole and Probation (see Part VI).

(3) Family probation, i.e., the present Criminal Court share of the non-support payment collection function of the Supreme Bench, is not included in our recommendation of transfer to the State Department of Parole and Probation. However, it is closely related to criminal probation. Also, family probation may be an expense transferred to the new District Court if, as seems quite possible at this writing, the Legislature amends the Desertion and Non-Support laws to make the maximum penalty less than three years so as to bring these offenses within the exclusive jurisdiction of the District Court.

(4) Defense counsel for indigents covers both courts under our recommendations (see Part VI and Appendix C).

(5) With regard to medical (which includes psychiatric) examination, we have recommended that the present service in Criminal Court be extended to the District Court and funded by the state (see Part VI), without any increase in its present funding.

(6) The item for the Sheriff's Office (prisoner transportation in

Municipal Court) is necessitated by the reorganization recommended in Part V. Technically, it only affects the lower court, but is included with "shared" programs as part of the total package of recommendations.

(7) Community service coordinators, who are intended to furnish in-court social service referral, are expected to serve both courts, but primarily the lower court (see Part VI).

(8) The Administrative Office of the Eighth Judicial Circuit is recommended (Part VI) to plan, budget, and manage selected programs in both courts; pre-trial release and counsel indigency determination, medical and psychiatric examination, and in-court social services referral.

Revenues are described in Tables 4 and 5. These tables are based on the assumption that present revenue levels will continue. This is a conservative assumption since in fact most revenue items in Criminal Court and Municipal Court have tended to increase in recent years.

Table 6 is a summary of expenses and revenues. The overall conclusion is that, under the recommendations of this Report and the District Court Act, the state will be paying net about $1.70 million more than it currently does for criminal justice (including Traffic Court). The city will be paying about $0.90 million -- net -- less than it currently does for criminal justice, which means it will realize a net revenue of about $0.71. This net revenue is, of course, a result of the retention of local

traffic (parking) fines provided by Chap. 528 of the Laws of Maryland 1970, Sec. 155. Without this revenue (about $1.48 million), the city would sustain a net expense of $0.77 million. Finally, the net cost to both the state and city will be about $0.99 million, an increase of about $0.79 million.

TABLE 1

EXPENSES RELATED TO CRIMINAL COURT
EXCLUDING PROGRAMS SHARED BY MUNICIPAL COURT (DISTRICT COURT)

	PRESENT (FY 71)			UNDER RECOMMENDATIONS OF THIS REPORT (NO CHANGES RECOMMENDED)		
	STATE	CITY	TOTAL	STATE	CITY	TOTAL
8 Judges' Salaries	$244,000	$ 0	$244,000	$244,000	$ 0	$244,000
Criminal Assignment Office[1]	0	155,061	155,061	0	155,061	155,061
Other Criminal Court Personnel	0	398,514	398,514	0	398,514	398,514
Other Criminal Court Expenses[2]	0	213,349	213,349	0	213,349	213,349
Criminal Clerk	168,000	125,000	293,000	168,000	125,000	293,000
Sheriff (Duties relating to Criminal Court)	0	260,800	260,800	0	260,800	260,800
TOTAL	412,000	1,152,724	1,564,724	412,000	1,152,724	1,564,724

[1] Includes Federal grant of $119,061
[2] Includes Criminal Court share of administrative cost, jurors, transcripts, Jury Commissioner

TABLE 1 (CONTD.)

EXPENSES RELATED TO CRIMINAL COURT
EXCLUDING PROGRAMS SHARED BY MUNICIPAL COURT (DISTRICT COURT)

	AMOUNT OF INCREASE (+) OR DECREASE (-)		
	STATE	CITY	TOTAL
, 8 Judges' Salaries	$ 0	$ 0	$ 0
Criminal Assignment Office	0	0	0
Other Criminal Court Personnel	0	0	0
Other Criminal Court Expenses	0	0	0
Criminal Clerk	0	0	0
Sheriff (Duties relating to Criminal Court)	0	0	0
TOTAL	0	0	0

TABLE 2

EXPENSES RELATED TO MUNICIPAL COURT (FUTURE CRIMINAL AND TRAFFIC DIVISIONS OF BALTIMORE CITY DISTRICT COURT)
EXCLUDING PROGRAMS SHARED WITH CRIMINAL COURT

	PRESENT (FY 71)			UNDER DISTRICT COURT ACT (FY 72)[1]		
	STATE	CITY	TOTAL	STATE	CITY	TOTAL
17 Judges' Salaries	$425,500	$ 0	$425,500	$425,500	$ 0	$425,500
Other Municipal Court Personnel Salaries and Costs	873,820	0	873,820	873,820	0	873,820
Space Rental and Maintenance[2]	0	284,623	284,623	284,623	0	284,623
Operating Expenses	260,456	0	260,456	260,456	0	260,456
Capital Outlay	17,270	0	17,270	17,270	0	17,270
TOTAL	1,577,046	284,623	1,861,669	1,861,669	0	1,861,669

(1) Chap. 528 of Laws of Md. 1970
(2) Includes $198,000/yr Rent on Traffic Court Building; remainder is maintenance costs on other Municipal Court facilities.

TABLE 2 (CONTD.)

EXPENSES RELATED TO MUNICIPAL COURT (FUTURE CRIMINAL AND TRAFFIC DIVISIONS OF BALTIMORE CITY DISTRICT COURT)
EXCLUDING PROGRAMS SHARED WITH CRIMINAL COURT

	AMOUNT OF INCREASE (+) OR DECREASE (-)		
	STATE	CITY	TOTAL
17 Judges' Salaries	$ 0	$ 0	$ 0
Other Municipal Court Personnel Salaries and Costs	0	0	0
Space Rental and Maintenance [2]	+284,623	-284,623	0
Operating Expenses	0	0	0
Capital Outlay	0	0	0
TOTAL	+284,623	-284,623	0

(2) Includes $198,000 per year rent on Traffic Court Building; remainder is maintenance costs on other Municipal Court facilities

TABLE 3

EXPENSES OF PROGRAMS SHARED BY CRIMINAL COURT AND MUNICIPAL COURT (FUTURE CRIMINAL AND TRAFFIC DIVISIONS OF BALTIMORE CITY DISTRICT COURT)

	PRESENT (FY 71)			UNDER RECOMMENDATIONS OF THIS REPORT (FY 72)		
	STATE	CITY	TOTAL	STATE	CITY	TOTAL
Pre-Trial Release Including District Court Commissioners[1]	$ 0	$236,658	$236,658	$648,700	$ 0	$648,700
Criminal Probation (Criminal Court)[2]	0	492,795	492,795	492,795	0	492,795
Family Probation (Non-Support Payment Collection) for Criminal Court (1/3 of Supreme Bench Total)[2,7]	0	224,791	224,791	0	224,791	224,791
Defense Counsel for Indigents[3]	219,000[5]	275,000[6]	494,000	645,800	0	645,800
Medical Examiner (90% of Supreme Bench Total)[2]	0	153,966	153,966	153,966	0	153,966
Sheriff: Prisoner Transportation for Municipal Court[4]	0	0	0	70,000	0	70,000
Community Service Coordinators (Primarily Municipal Court)[2]	0	0	0	115,000	0	115,000
Administrative Office of the 8th Judicial Circuit[2]	0	0	0	50,000	0	50,000
TOTAL	219,000	1,383,210	1,602,210	2,176,261	224,791	2,401,052

See next page for footnotes.

TABLE 3 (CONTD.)

EXPENSES OF PROGRAMS SHARED BY CRIMINAL COURT AND MUNICIPAL COURT (FUTURE CRIMINAL AND TRAFFIC DIVISIONS OF BALTIMORE CITY DISTRICT COURT)

	AMOUNT OF INCREASE (+) OR DECREASE (-)		
	STATE	CITY	TOTAL
Pre-Trial Release Including District Court Commissioners[1]	+$648,700	-$236,658	+$412,042
Criminal Probation (Criminal Court)[2]	+ 492,795	- 492,795	0
Family Probation (Non-Support Payment Collection) for Criminal Court (1/3 of Supreme Bench Total)[2,7]	0	0	0
Defense Counsel for Indigents[3]	+ 426,800	- 275,000	+ 151,800
Medical Examiner (90% of Supreme Bench Total)[2]	+ 153,966	- 153,966	0
Sheriff: Prisoner Transportation for Municipal Court[4]	+ 70,000	0	+ 70,000
Community Service Coordinators (Primarily Municipal Court)[2]	+ 115,000	0	+ 115,000
Administrative Office of the 8th Judicial Circuit[2]	+ 50,000	0	+ 50,000
TOTAL	+ 1,957,261	-1,158,419	+ 798,842

[1]See Part VI and Appendix B of this Report.
[2]See Part VI of this Report.
[3]See Part VI and Appendix C of this Report.
[4]See Parts V and VI of this Report not presently provided; necessitated by reorganization recommendations of this Report (Part V).
[5]Based on extending $80,000 19-week grant of Governor's Commission on Law Enforcement over 52 weeks.
[6]Present yearly expense for appointed counsel in Criminal Court.
[7]This cost will shift to the new District Court if - as may occur in the 1971 Legislative Session - the maximum penalty for Desertion and Non-Support is reduced to less than three years to bring the offense within the exclusive jurisdiction of District Court.

TABLE 4

ESTIMATED REVENUES OF CRIMINAL COURT

	PRESENT (FY 69)			FUTURE (FY 72)		
	TO STATE	TO CITY	TOTAL	TO STATE	TO CITY	TOTAL
Fines	$ 0	$364,915	$364,915	$ 0	$364,915	$364,915
Fees	0	33,000	33,000	0	33,000	33,000
Bail Forfeiture	0	32,000	32,000	0	32,000	32,000
Portion of Supreme Bench Support Payment Collection Fees	0	167,500	167,500	0	167,500	167,500
Appearance Fee, State's Attorney	0	8,500	8,500	0	8,500	8,500
TOTAL	0	605,915	605,915	0	605,915	605,915

TABLE 4 (CONTD.)

ESTIMATED REVENUES OF CRIMINAL COURT

	AMOUNT OF INCREASE (+) OR DECREASE (-)		
	TO STATE	TO CITY	TOTAL
Fines	$ 0	$ 0	$ 0
Fees	0	0	0
Bail Forfeiture	0	0	0
Portion of Supreme Bench Support Payment Collection Fees	0	0	0
Appearance Fee, State's Attorney	0	0	0
TOTAL	0	0	0

TABLE 5

ESTIMATED REVENUES OF MUNICIPAL COURT
(FUTURE CRIMINAL AND TRAFFIC DIVISIONS OF NEW DISTRICT COURT)

	PRESENT (FY 70)			UNDER DISTRICT COURT ACT (FY 72)		
	TO STATE	TO CITY	TOTAL	TO STATE	TO CITY	TOTAL
Court Costs (Criminal Division)	$ 99,668	$ 0	$ 99,668	$ 99,668	$ 0	$ 99,668
Court Costs (Traffic Division)	762,460	0	762,460	762,460	0	762,460
Traffic Fines - State	1,343,811	0	1,343,811	1,343,811	0	1,343,811
Traffic Fines - City	0	1,481,599	1,481,599	0	1,481,599	1,481,599
Criminal Fines	0	539,521	539,521	539,521	0	539,521
TOTAL	2,205,939	2,021,120	4,227,059	2,745,460	1,481,599	4,227,059

TABLE 5 (CONTD.)

ESTIMATED REVENUES OF MUNICIPAL COURT
(FUTURE CRIMINAL AND TRAFFIC DIVISIONS OF NEW DISTRICT COURT)

	AMOUNT OF INCREASE (+) OR DECREASE (-)		
	TO STATE	TO CITY	TOTAL
Court Costs (Criminal Division)	$ 0	$ 0	$ 0
Court Costs (Traffic Division)	0	0	0
Traffic Fines - State	0	0	0
Traffic Fines - City	0	0	0
Criminal Fines	+539,521	-539,521	0
TOTAL	+539,521	-539,521	0

TABLE 6

SUMMARY OF EXPENSES AND REVENUES IN BOTH COURTS

	PRESENT (FY 71)			UNDER RECOMMENDATIONS OF THIS REPORT AND DISTRICT COURT ACT (FY 72)		
	STATE	CITY	TOTAL	STATE	CITY	TOTAL
EXPENSES:						
Criminal Court	$ 412,000	$1,152,724	$1,564,724	$ 412,000	$1,152,724	$1,564,724
Municipal Court (Future Criminal & Traffic Divisions of Baltimore City District Court)	1,577,046	284,623	1,861,669	1,861,669	0	1,861,669
Shared Programs	219,000	1,383,210	1,602,210	2,176,261	224,791	2,401,052
TOTAL EXPENSES	2,208,046	2,820,557	5,028,603	4,449,930	1,377,515	5,827,445
REVENUES:						
Criminal Court	0	605,915	605,915	0	605,915	605,915
Municipal Court (Future Criminal & Traffic Divisions of Baltimore City District Court)	2,205,939	2,021,120	4,227,059	2,745,460	1,481,599	4,227,059
TOTAL REVENUES	2,205,939	2,627,035	4,832,974	2,745,460	2,087,514	4,832,974
NET EXPENSES (-) OR REVENUES (+):						
Criminal Court	-412,000	- 546,809	-958,809	-412,000	-546,809	- 958,809
Municipal Court (Future Criminal & Traffic Divisions of Baltimore City District Court)	+628,893	+1,736,497	+2,365,390	+883,791	+1,481,599	+2,365,390
Shared Programs	-219,000	-1,383,210	-1,602,210	-2,176,261	-224,791	-2,401,052
TOTAL EXPENSE (-) OR REVENUE (+)	- 2,107	- 193,522	-195,629	-1,704,470	+ 709,999[1]	- 994,471

[1]Note that this net city revenue is entirely due to local traffic (parking) fines of $1,481,599; without this amount, the city would sustain a net expense of $771,600.

TABLE 6 (CONTD.)

SUMMARY OF EXPENSES AND REVENUES IN BOTH COURTS

	AMOUNT OF INCREASE (+) OR DECREASE (-)		
	STATE	CITY	TOTAL
EXPENSES:			
Criminal Court	$ 0	$ 0	$ 0
Municipal Court (Future Criminal & Traffic Divisions of Baltimore City District Court)	+284,623	-284,623	0
Shared Programs	+1,957,261	-1,158,419	+ 798,842
TOTAL EXPENSES	+2,241,884	-1,443,042	+ 798,842
REVENUES:			
Criminal Court	0	0	0
Municipal Court (Future Criminal & Traffic Divisions of Baltimore City District Court)	+539,521	-539,521	0
TOTAL REVENUES	+539,521	-539,521	0

PART VIII: UNFINISHED BUSINESS: RESIDUAL AREAS OF RECOMMENDATION

VIII. Unfinished Business: Residual Areas of Recommendations

The foregoing parts discuss the key areas requiring resolution in order to achieve practical improvement in the daily operations of the criminal justice system in Baltimore City. The programs recommended strike at the most important problems in criminal justice by furnishing practical solutions which may be implemented.

As in any comprehensive management analysis, however, our study of the Baltimore City criminal courts has uncovered other problems requiring attention and improvement. Although we have not been able to devote major effort to these subjects because of limitations of time and resources, we would be remiss if we did not call them to the attention of the Maryland Bar Foundation. When resources become available, the problems should be fully explored.

Traffic Division - Municipal Court

The Traffic Division handles the greatest volume of cases filed in Municipal Court. It is through this division, therefore, that hundreds of Baltimore citizens receive their introduction to the criminal justice system of Baltimore City. Moreover, although the division frequently handles only minor infractions of the law, these violations can lead to extensive property damage and injury. The Traffic Division plays a major role by introducing numerous individuals to the criminal justice

system in Baltimore City and by educating them to their responsibilities as citizens of the community before a more serious offense is committed. It is essential that traffic cases be processed efficiently and effectively, and that the division maintain high standards expected of judicial agencies.

We found a less than adequate traffic case processing system. Attention should be focussed in many areas -- the need for adequate judicial manpower, for tighter scheduling and postponement policies and for accurate and available court records and case files. A comprehensive management information system, a review of current use of electronic data processing, and review of the new use of the Uniform Traffic Ticket are needed. Moreover, the Traffic Division should maximize its opportunity of performing an educational function in the community -- in terms of the substance of the particular case. The development of full-time probation services would appear highly desirable. All of these matters require attention.

Courthouse Space Planning

The immediate need for long-range planning for adequate courthouse space facilities presents a major problem which needs considerable study. Within a short time the Central Criminal Division facility of Municipal Court will be demolished for freeway construction. Moreover, the need for expanded court services recommended in this report will require

additional space facilities. It is not enough merely to have "space" for the court to operate; the space should be conducive to independent judicial proceedings. A court in a police station lacks this atmosphere, and all of the Criminal Division Courts are located in police facilities.

Baltimore City is in urgent need of a thorough long-range (1970-1990) space utilization study of the building requirements for all Baltimore courts of criminal and civil jurisdiction and related criminal justice agencies. Such a study should deal specifically with the space implications of Baltimore's caseload, population and community needs. Such a study should coordinate with federal courthouse construction. It should examine existing space facilities as well as determine new space requirements. From the state viewpoint, the needs of the Circuit Court (all divisions) and the New District Court should be studied jointly to achieve economy of operation.

Sheriff's Office and Service of Process

Although we have not studied the Sheriff's Office in great detail, our limited review makes evident that the Office of the Sheriff is not being conducted with utmost efficiency. The Office of Sheriff was originally created as an arm of the court to perfom specific services. The court needs such services. It needs assurances that witnesses will appear before it. It needs assurance that necessary papers will be

served, and that defendants will be in court when needed. Difficulties in service of court papers are apparent.

In the long run, the Administrative Officer of the Eighth Judicial Circuit position recommended elsewhere in this report, should take over sheriff's functions. However, in view of the legal problems involved in such a transfer, efforts should be devoted now to assure that the Sheriff's Office will become a more effective ministerial office of the court.

The key question which requires study is: what steps must be taken to assure that the sheriff's function will be adequately performed? The sheriff functions exist apart from those of the city police and cannot be performed by them. Whether creation of a new office or an organizational restructuring will be necessary should be considered. Certainly the office must be manned with qualified persons who have adequate support to perform their primary responsibilities to support the Court. We are recommending financial support for the Sheriff . (See Part VII.)

Clerk of Criminal Court

Ideally, the office of Clerk, like that of Sheriff, should be viewed as a minsterial office of the court, and the court should take a stronger position over such functions. Management responsibility could well be lodged with the new Administrative Officer of the Eighth Judicial Circuit

as was suggested in the discussion of the Office of Sheriff above. In the short run, therefore, considerable effort must be made toward making this office more efficient in the total administration of court proceedings. The maintenance of adequate and available records and case files and the development of a comprehensive information system are two important areas in need of study. The data flow should be smooth; it should be prompt and should reach all involved in the case -- particularly the judge. The Criminal Assignment Commissioner can do much to modernize the Clerk's Office.

APPENDIX A:

CRIMINAL CASEFLOW IN MUNICIPAL COURT AND CRIMINAL COURT: A STATISTICAL ANALYSIS

Outline of Appendix A

APPENDIX A: Criminal Caseflow in Municipal Court and Criminal Court: A Statistical Analysis

SUMMARY OF CONCLUSIONS

1. It is reasonable to use 1969 data to describe the pattern of caseflow and the geographic distribution of workload among courts.

2. A significantly increasing number of cases are coming before the Criminal Court which are not being resolved through the traditional means of trial and acquittal or conviction and criminal sanction; therefore more attention must be paid to screening cases before they enter the formal adjudicatory process, and to diverting cases which primarily involve social or psychiatric problems by referring them to appropriate service agencies. The courts, which are the impartial arbiters of the entire criminal process, have the responsibility to ensure that available resources for screening and diversion are fully utilized, so that the criminal trial--a delicate, complex and expensive instrument--can be used most effectively.

3. Workload analysis leads to the conclusion that the Municipal Court should be reorganized. The courts in three Districts--Southwestern, Northern, and Northeastern--should be closed except in emergencies, as recommended in Part V of this Report. The workload of each closed District Court should be assigned to an adjacent District Court, as shown by comparing columns 6 and 7 of Table 1.

4. The data showing that present processing time for criminal cases is normally five to six months supports the recommendations in Part IV of this Report concerning improvements in caseflow management procedures through the new Supreme Bench Criminal Assignment Office. Clearly, drastic changes are needed to reduce delay from a median of five to six months to a maximum of three months, which is the long-term goal recommended in Part IV.

5. Comparison of the Benchmark Inventory with the Milton Allen study of 1967 indicates a recent and quite rapid growth of backlog. Improved programs of calendar management and backlog reduction should therefore be implemented without delay.

1. Problems with Existing Official Statistics; Use of 1969 Data.

Except for the Milton Allen data and the Benchmark Inventory data discussed below in Section 6, this analysis relies on published official statistics of law enforcement agencies and courts. Each agency keeps its own statistics for its own purposes, and the resulting inconsistencies make it difficult to view the criminal process comprehensively.

It is important to explain the units counted by the various agencies. The Police Department's unit is the arrest. An arrest involves one defendant only, but may involve a number of charges against that defendant, some interrelated* and some not. The Municipal Court, in its reports to the Director of the (state) Administrative Office of the Courts, employs the "case" as a unit. This Municipal Court case, not to be confused with the Criminal Court case, is one defendant and one specific charge against that defendant. For example, if the defendant is arrested and charged with three offenses, three Municipal Court cases are counted, even though the offenses may be interrelated. The Criminal Court employs a different definition of "case." In the vocabulary of Criminal Court and State's Attorney's Office personnel, a Criminal Court case is a docket number. A docket number is associated with one or more interrelated defendants and one or more interrelated charges against those defendants. The

*For a statutory guide on joinder and separation of charges and defendants, see Maryland Rules of Proc., Rules 716, 734, and 735.

Criminal Court case, or docket number, is a reasonable unit in terms of court processing; defendants and charges which are interrelated are counted as an integral piece of court business. The official practice of the State's Attorney's Office is to put all interrelated charges against a defendant on the indictment or information, which is then given one docket number by the Criminal Court. The actual practice varies somewhat from this official policy. In doing the Benchmark Inventory discussed below, the study group found that, in some instances, several indictments (and docket numbers) are entered against one defendant which involve interrelated charges and should therefore be grouped together in one indictment and docket number.

The analysis which follows in Section 2 is based mainly on 1969 caseflow data, the most recent year for which a comprehensive set of data was available when this Report was prepared. The question must be asked whether this data gives a good approximation of activity in later years. At this writing, the conclusion of the study group is that, although caseflow will change in a number of ways in the future, it is reasonable to use 1969 data to describe the pattern of caseflow and the geographic distribution of workload among courts. In reading the description, however, certain factors which affect the 1969 caseflow figures should be kept in mind.

- Changes in the total number of arrests per year. If the general trend since 1965 continues, arrests will drop slightly in 1970 and 1971, which will, of course, slightly decrease the case intake of Municipal

Court and Criminal Court. Adult arrests in 1970 are estimated at 46,000.

- The transfer of 16-and 17-year-old defendants to the jurisdiction of Juvenile Court by court decision (August 1970). In 1969, the arrests of such defendants amount to 5,797, or about 12% of the total arrests processed by Municipal Court (48,768). Since such defendants are now to be handled by Juvenile Court, we can expect that this jurisdictional change, by itself, will tend to decrease Municipal Court intake by about 12%. Early in this study, it seemed likely that there would also be an accompanying increase in Criminal Court intake, due to a higher intake in Juvenile Court and an increase of waivers of that court's jurisdiction. In fact this does not appear to have happened. Judging from the available data, Juvenile Court intake has not increased by 6,000 defendants per year but only by about 1,900. Waivers are evidently adding only 200 defendants per year to the intake of Criminal Court.

- Prosecutorial screening. It is already clear that pre-indictment prosecutorial screening, instituted by the State's Attorney's Office in 1970, has had a large impact on indictments filed. The latter dropped from about 9,300 in 1969 to about 6,800 in 1970. This decrease of 2,500 (27%) was only partly attributable to a drop of 1,000 in Municipal Court cases held for Grand Jury, from about 10,000 in 1969 to about 9,000 in 1970. These 1,000 Municipal Court cases were equivalent to about 870 defendants, or about 800 Criminal Court cases (see explanation in subsection (b) below).

- In-court social service programs. Such programs, as presently operated and as extended and improved under the recommendations of this Report, will certainly decrease the intake of Criminal Court by a significant amount. Probably the intake of Municipal Court will also be decreased by such programs, since the number of screened cases remanded from Criminal Court to Municipal Court will probably be less than the decrease in Municipal Court intake due to screening in that court.

- Counsel for the indigent at preliminary hearings. About 4,400 of the approximately 8,700 defendants per year transferred to Criminal Court from Municipal Court are estimated to be indigent (see Appendix C of this Report). About 1,800 of these 4,400 now receive counsel under the Coleman decision. Reports on the first months of operation of the Legal Aid Bureau interim public defender system indicate that about 44% of the indigent defendants are being dismissed or tried on

reduced charges in Municipal Court after preliminary hearing, and thus are not being transferred to Criminal Court. If this effect continues, it would, by itself, have the effect of decreasing Criminal Court intake. It would also increase the number of trials in Municipal Court to some extent (because of reduction of charges).

- The District Court Constitutional Amendment and Chapter 528 of the Laws of Md. of 1970. Clearly, these provisions will affect the number of cases transferred from Municipal Court to Criminal Court, but it is not clear whether there will be an increase or decrease or what the magnitude of the change will be.

2. Analysis of Citywide Criminal Arrests and Caseflow.

The principal determinant of criminal court caseload is, of course, arrest activity. Arrest is virtually the sole route into Municipal Court for criminal cases (which do not include housing and traffic); the number of criminal cases begun by summons is estimated at 5% or less. Table 1 shows a citywide total of 48,768 arrested defendants processed in the city's criminal courts in 1969. These figures were computed from Police Department monthly computer printouts, excluding the following arrest categories: Juvenile Delinquency, Violation of Parole, Held for Investigation, Witnesses, Held for Military Authority, Held for other Jurisdiction, and Held for Sheriff. (Arrests of 16-and 17-year-olds, who were not considered juveniles in 1969, are included.)

The monthly figures are believed to be accurate with respect to the relative share of districts, but are believed to be inflated in absolute value; their total was 54,991. The 1969 yearly report to the F.B.I. of arrests of persons 16 years and older showed a total of 48,768, which is believed to be much more accurate than the 54,991. Each of the monthly figures was therefore multiplied by (48,768)/(54,991) to obtain the estimated figures of Table 1.

Of the 48,768 total arrested defendants, 19,006 (39%) were in the Non-Serious category, which includes arrests for such offenses as Begging, Vagrancy, License Law Violations, Park Rule Violation, Ticket Scalping, and the like. The term "Serious" as used here means "punishable by a

maximum sentence of death or imprisonment for six months or more or a fine of $500 or more but not including non-support" (this criterion is used by Rule 719(b) of the Maryland Rules to establish eligibility for appointment of defense counsel). An estimated 8,717 (18%) of the arrested defendants were transferred to the jurisdiction of Criminal Court. The 40,051 arrested defendants not transferred to Criminal Court went on to dismissals, trials, and other dispositions in the Municipal Court.

Dispositions of criminal cases in Municipal Court in 1969 are shown in Table 2. There is no comparable data on criminal cases filed. In Table 2, the unit employed is not the arrested defendant but the Municipal Court case, which is a single charge against one defendant. It is possible to reconcile this unit with arrested defendants if we assume that virtually all of the 1969 arrests led to case dispositions in 1969. This is close to the truth, judging by the speed of dispositions in Municipal Court (a court not known for elaborate legal proceedings) and the postponement rate (29% for the year September 1968 - August 1969). If this assumption is correct, there were 56,303 cases (actually case dispositions) for 48,768 defendants in 1969, or an average of 56,303/48,768 = 1.15 Municipal Court cases per arrested defendant in 1969. The Municipal Court disposition percentages, showing the treatment of cases, are probably true of treatment of arrested defendants as well.

Looking at Municipal Court dispositions (Table 2), we find that 31% are Dismissals, Acquittals, or Probation before Verdict. Furthermore,

when the defendant appeals a Municipal Court conviction to the Criminal Court for a trial de novo (which he has an absolute right to do; Md. Ann. Code Article 5, Section 3), he has a good chance of winning. In 1969, in terms of Criminal Court cases (docket numbers), 563 (31%) of a total of 1816 Municipal Court Appeal dispositions were either Acquittal, Probation before Verdict, Not Guilty Confessed, Stet, or Nolle Prosequi.

In Table 1, column 4 shows an estimated total of 8,717 arrests resulting in transfer to the jurisdiction of Criminal Court; this includes defendants charged with offenses beyond the trial jurisdiction of Municipal Court, defendants who pray a jury trial, defendants who have a companion case pending within the jurisdiction of Criminal Court, and defendants as to whom the Municipal Court judge waives jurisdiction. This figure was derived in the following way. First, the percentage of 1969 Municipal Court cases held for Grand Jury* in each district was computed (see Table 2). This percentage was then applied to the 1969 arrests in each district to obtain an estimate of arrests resulting in Grand Jury action; the total of these figures is 8,717. This total of 8,717 is also used as an approximation of the total of arrests

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*"Held for Grand Jury" as used herein means "transferred to Criminal Court." Most of such defendants, being charged with felonies, are held for Grand Jury action. Until recently, Criminal Court defendants charged only with misdemeanors were also held for Grand Jury action, but since January 4, 1971, any Criminal Court defendant not charged with a felony is - according to the State's Attorney's Office - charged by criminal information rather than by indictment. This is a partial implementation of a main theme of this Report (see Part IV): substitution of information for the cumbersome indictment procedure wherever possible.

resulting in transfer to Criminal Court. Unfortunately, no separate statistics are kept by Municipal Court for felony preliminary hearings and dismissals after preliminary hearing. However, it is generally believed that in 1969, before the inception of the present public defender program, 95% or more of the felony preliminary hearings resulted in the defendant's being held for the Grand Jury. It is impossible to confirm this belief from the Municipal Court records, because no distinction is made between a dismissal after preliminary hearing (for lack of probable cause) and a dismissal on the merits; both types are simply noted as "dismissed."

Table 1, column 5 shows the estimated arrests for cases beyond the jurisdiction of Municipal Court. Each figure in this column was computed by taking 72% of the corresponding figure in column 4. This percentage is based on 458 cases held for Grand Jury in the month of December 1970 (see Table 1A).

The estimated 8,717 defendants in 1969 who were transferred from Municipal Court to Criminal Court were almost without exception presented to the Grand Jury for indictment.* The official figures published by the State's Attorney's Office do not tell us how many of the 8,717 defendants

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*Since early 1970, however, the State's Attorney has instituted a pre-indictment screening program, the purpose of which is to scrutinize the evidence against defendants and, where appropriate, to reduce the charge and remand to Municipal Court, or to dispose of the case by nolle prosequi. The effect of this program is discussed in Section 1 above and in Part IV.

were indicted. We do know that 9,423 Criminal Court cases (docket numbers) were presented to the Grand Jury, which dismissed 110 and returned 9,313 indictments. Almost all of these indictments involved defendants arrested, processed by Municipal Court, and then transferred to Criminal Court. The number of "specials" (direct indictments without prior Municipal Court processing) was probably less than 100 in 1969. The 1969 dispositions are shown in Table 3 in terms of Defendants and in terms of Indictments (Criminal Court cases). (Note that these dispositions are not all dispositions of the new cases which came into the court during the year; an unknown percentage were dispositions of cases left over from earlier years.) Although the total of disposed defendants and the total of disposed indictments do not agree, the percentages of various types of dispositions are quite close, proving that either unit can be used to obtain gross statistics over a long period of time. To reconcile the two units (defendant and Criminal Court case) with each other, we can compute the average number of defendants per case. Dividing Arrested Defendants by Presentments, we get 8,717/9,423 or 0.93 cases per defendant. Dividing Total Defendants Disposed by Total Indictments Disposed, we get 8,543/7,809 or 1.09. The figure of 1.09 is probably the more accurate of the two, because the Arrested Defendant figure is an estimate and a small but unknown number of defendants are indicted without prior arrest. The conclusion is that an average of 1.09 actual defendants is involved in one Criminal Court indictment.

Looking again at Criminal Court indictment dispositions (Table 4), we find that Dismissals, Probation before Verdict, Not Guilty Confessed, Stet, and Nolle Prosequi currently amount to 42% of the total dispositions. This percentage, which can be called the "washout rate," shows that a substantial number of cases and defendants drop out before trial--presumably because the evidence against them is not sufficiently strong. The Criminal Court "washout rate" has been increasing very rapidly in recent years, from 18% in 1960 to 45% in 1970. In Municipal Court, the percentage of cases resulting in "washout" or acquittal has also been increasing--from 23% in 1965-66 to 31% in 1968-69 (Table 5).

The above Municipal Court and Criminal Court figures support a principal theme of this Report: A significantly increasing number of cases are coming before the criminal courts which are not being resolved through the traditional means of trial and acquittal or conviction and criminal sanction; therefore more attention must be paid to screening cases at the post-arrest (Municipal Court) stage before they enter the formal adjudicatory process, and to diverting cases which primarily involve social or psychiatric problems by referring them to appropriate service agencies. This screening and diversion effort is the responsibility of each of the interdependent agencies: the Police Department, the State's Attorney's Office (in both criminal courts), Municipal Court, and Criminal Court. With respect to the above figures, we can say that if the police had been more selective in making

arrests and in booking defendants after arrest, the "washout rates" would have been lower in both courts, and the judges would have been more able to concentrate on adjudication. If prosecutors had exercised their screening and investigative powers more diligently, the same would have been true. Most importantly, the courts, which are the impartial arbiters of the entire criminal process, have the responsibility to ensure that available resources for screening and diversion are fully utilized, so that the criminal trial--a delicate, complex and expensive instrument--can be used most effectively.

3. Other Municipal Court Workload

Municipal Court, Criminal Division, has a considerable workload other than that already described above, i.e. other than that generated primarily by arrests. This other workload consists of applications for warrants and informal hearings (Table 6). This work is of the type to be assigned to commissioners under the District Court legislation (Chapter 528 of the Laws of Maryland 1970, Sec. 154). This Report recommends (see Part VI and Appendix B) a staff of 19 commissioners in the Criminal Division of the new Baltimore City District Court. If this recommendation is followed, the warrant and informal hearing workload of the District Court judges will be considerably lightened, freeing more of their time for criminal trials.

Applications for warrants are of two distinct types, although unfortunately the available statistics do not give a separate count for each type. In a warrant application, either a victim of a "real" crime is seeking a warrant for the arrest of the perpetrator, or a complainant in a "quasi-civil" matter is seeking a warrant to bring someone who has allegedly wronged him or her to court. In the latter situation, the typical adversaries are husband and wife, family members, feuding neighbors, and the like, and the object of the dispute usually is a matter such as support payments, property, alleged insults, or simple assaults. Informal hearings are also of the husband versus wife and neighbor versus neighbor variety, with the judge acting as a mediator of a dispute.

Table 6 shows actual figures on applications for warrants and on informal hearings, which would not be redistributed under the reorganization plan recommended in Part V of this Report. Warrant applications and informal proceedings would be primarily a task of commissioners, not judges, in all districts including those where judicial sittings are to be suspended (Southwestern, Northern, and Northeastern).

4. Geographic Distribution of Municipal Court (Criminal Division) Workload: Present and Recommended

The data on arrested defendants by district in Table 1 supports the recommendations in Part V of this Report concerning reorganization of the Municipal Court, Criminal Division.

The reason for reducing judicial activity to a minimum in the Southwestern, Northern, and Northeastern Districts can easily be seen in this table. In each column showing 1969 arrests these three Districts are considerably lower than the other six.

Under the proposed reorganization, all preliminary hearings for cases beyond the trial jurisdiction of Municipal Court will be held in a new court in the Central District. With respect to other cases, there can be flexibility in allocation to Districts. For the initial allocation, we suggest the following scheme. The courts in three districts--Southwestern, Northern, and Northeastern--should be closed except for warrants, as recommended in Part V. The workload of each closed District Court should be assigned to an adjacent Court, as shown by comparing columns 6 and 7 of Table 1. In Police Area One, Southwestern will be closed and hence its workload will be zero arrests. Its former workload of defendants within the court's trial jurisdiction will go to Southern. The court in Central will continue to handle such defendants as in the past. In Police Area Two, Northern will be closed and its workload of defendants within the court's trial jurisdiction will go to Northwestern;

Western will stay as it was. In Police Area Three, Northeastern will be closed and its workload of defendants within the court's trial jurisdiction will go to Eastern; Southeastern will stay as it was. Column 6 shows the arrest workload under this suggested scheme, for each of the nine present courts plus the recommended new preliminary hearing court located in the Central District. This column should be compared with Column 3, which shows the total arrest workload in 1969 for each of the nine courts. In 1969, there was an average of 5,419 arrests per court (15 per day), but with a large inequality in distribution: a low of 2,855 (8 per day) in Northern and a high of 10,410 (29 per day) in Central. Under the suggested scheme, the average for the six courts other than the preliminary hearing court is 7,081 (19 per day) and the inequalities are greatly reduced; the low is 5,925 (16 per day) in Western and the high is 9,063 (25 per day) in Central.

5. Time Required to Dispose of Criminal Cases

With respect to case disposition times, we have supplemented the available published data with several samples. In terms of median times (i.e. times above and below which half of the cases fall), the following approximate judicial processing timetable has emerged.

Processing Step	Median Time (calendar days)
Arrest to Municipal Court trial or preliminary hearing (counting day of arrest as one day)	2
Preliminary hearing to by Criminal Court Clerk (for cases held for Grand Jury only)	1
Receipt of papers by Criminal Court Clerk to presentment to Grand Jury	6
Presentment to Grand Jury indictment	4
Indictment to disposition (does not include time from conviction to sentencing)	150 (5 months)
Conviction to sentencing	16 (average)

Thus for the typical Criminal Court case there is a total processing time of 163 calendar days from arrest to disposition, and for indictments disposed by conviction (about 51%), there is an additional time requirement of about 16 calendar days for sentencing. For the typical case, therefore, the total processing time can be said to be from 163 to 179 calendar days, or from 5.4 to 6.0 calendar months.

The long-range goal of the recommendations for caseflow management in Criminal Court, described in Part IV of this Report, is a limit of three months from filing of the indictment or information to disposition, plus about one-half month from arrest to indictment or information--a total of three and one-half months. Clearly, drastic changes in the caseflow management are needed to reduce the present processing time limit of five to six months to a limit of three and one-half months. Furthermore, the Criminal Assignment Office of the Supreme Bench, in reducing this processing time, will have to overcome a trend of increase of processing delay. Table 7 shows that the main component of delay (the time from filing until disposition) has more than doubled in the past eight years.

6. Criminal Court Cases Open as of July 3, 1970: Benchmark Inventory

In order to determine the actual size of the Criminal Court's workload of presentments, indictments, criminal informations, appeals from Municipal Court, bastardy and domestic informations, "warrants" (housing cases in which the defendant prays a jury trial), and defective delinquent petitions, a group supervised by Court Management Systems captured, on July 3, 1970, the numbers of all cases whose individual record folders were identifiably filed as "open" by the Criminal Court Clerk. As a cross-check on filing, all entries in the 1969 and 1970 Indictment Docket Books were examined to make sure that all open indictments were included, and approximately fifty additional open indictments were found in this way. A form (see next page) was then completed on each such case, using the docket books and individual case folders, containing the defendant's name, a code indicating whether or not he had any appearance of counsel, his bail/jail status, the status of the case with respect to court processing (i.e. whether it was really still open, and if so, whether it was ready for trial or not), and the type of offense charged.

a. Explanation of first computer output

The first statistical report generated by computer from the benchmark inventory data is reproduced in Table 8. It is a cross-tabulation of open criminal matters in the Criminal Court as of July 3, 1970. One can speak of an open case or an undisposed defendant. An open case is a case with at least one undisposed defendant. A disposed defendant is one with

[ ] Type of case (Indictment=X, Appeal=A, ~~Remand=R,~~ Information=N, Presentment=P)
(Domestic=D, Bastardy=B, Defective Delinquent=F, Warrant(Housing)=W)

[ ] Year

[ ] Docket number

[ ] Defendant number if more than one defendant

[ ] Defendant's name on official record (last name first)

[ ] Defendant's counsel status (C= appearance of counsel entered; N= none)

[ ] Defendant's detention status (jail=J, bail=B, own recognizance=R)

[ ] Date of indictment, appeal, remand, or information
(If presentment has not resulted in indictment, use presentment date.)

07/03/70 Cutoff date

[ ] Offense code (general)

[ ] Offense code (specific)

[ ] Closed case: enter first applicable disposition code.

PIGN Presentment reconsidered and ignored by Grand Jury
COIM Committed to mental hospital
PVER Probation before verdict
STET Stet entered
NOLP Nolle prosequi
NGCF Not guilty confessed
DISM Dismissed
APLW Appeal withdrawn
NGVR Verdict not guilty (acquittal)
SENT Judgment imposed (sentenced)
REMD Remanded to Municipal Court
TRAN Transferred to other court (e.g. Juvenile Court)
OTHR Other final disposition, including Abated by Death

[ ] Open case: enter first applicable status code.

SUBC Sub curia; defendant awaiting judgment (sentence) after any type of conviction: Verdict guilty
Plea of guilty
Plea of nolo contendere
CONF Defendant confined in another jurisdiction
PSYC Defendant undergoing psychiatric exam or treatment
HOSP Defendant in hospital (not psychiatric)
CPAS Capias issued but not executed
2CAP Second capias issued but not executed
BWNT Bench warrant ("pink") issued but not executed
OTHR Awaiting disposition in status other than above
POST Post-conviction proceedings: ~~Violation of probation~~
Petition
Appeal to higher court
Etc.

VIOL Violation of Probation

respect to whom one of the following dispositions has occurred:

- Presentment reconsidered and ignored by Grand Jury
- Committed to mental hospital
- Probation before verdict
- Stet entered
- Nolle prosequi
- Not guilty confessed
- Dismissed
- Appeal withdrawn
- Verdict not guilty
- Judgment (sentence) imposed
- Remanded to Municipal Court
- Transferred to other court
- Abated by death

An undisposed defendant is, of course, one who is not disposed.

The rows (horizontal lines) of Table 8 correspond to various forms of criminal process--presentments, indictments, etc. The columns (vertical lines) of the table give counts of pending business by year filed (1970, 1969, 1968, and Prior Years), the total of all years, and the number and percentage of non-triables. The units counted are (1) cases, i.e. docket numbers, which are the standard units used in the Criminal Court (see Section 1 above), and (2) defendants. The latter unit, as defined here, is not an individual

accused person; it is a defendant in a single case. For example, in this table, if three docket numbers were involved--no. 301, with defendants A, B, and C; no. 302, with defendants B and D; and no. 303, with defendants A, D, E, and F--three cases would be counted, and nine defendants. Defendant A would be counted twice because his name appears twice; the same would be true of defendant B and defendant D.

The defendant unit used in Table 8 is entirely new; it is not one of those discussed in Section 1 above. The reason for introducing it is that it is the basic unit of scheduling (calendaring) the criminal work of the court. Even though defendants A, B, and C in docket number 301 would usually appear in court at the same time, procedures would have to be executed and information recorded with respect to each of the three. Figures are also shown in terms of cases, the standard units, to permit comparison of the new counting system with the old. However, in one column, Non-Triable, only a count of defendants is shown. The reason is that only the defendant can be said to be non-triable, not the case. Non-triable defendants are those whose processing is held up--temporarily or permanently--for any of the following reasons: the defendant is confined in another jurisdiction, undergoing psychiatric examination or treatment, or in a hospital (other than a mental hospital); the capias or second capias has been issued but returned unexecuted (returned "non est"); or a bench warrant has been issued for the defendant but not executed. Triable defendants are defendants who are

awaiting trial, or are tried and convicted but awaiting sentence ("sub curia"), or are involved in post-conviction proceedings, or have violated a probation sentence and have a warrant for violation of probation issued against them.

One thing to observe about the table is the relationship between cases and defendants (as defined for the purposes of this section). For indictments, the ratio of defendants* to cases is 7,465/5,816 or 1.28 to 1. For appeals, however, the ratio is almost 1 to 1. The reason for this is that a defendant appealing a Municipal Court conviction appeals his individual conviction, even though he may have been convicted with several co-defendants.

Another observation about the table is that the use of the criminal information is nil. This supports the findings in Part IV of this Report concerning over-use of the time-consuming Grand Jury indictment.

b. Interpretation of Table 8

The interpretation will focus on indictments and appeals from Municipal Court (rows 2 and 4). Presentments are, of course, cases presented to the Grand Jury for indictment which have not yet resulted in indictment and which may be "reconsidered and ignored" by the Grand Jury. Most of these are very recent; the three shown for 1969 and the one shown for 1968 and prior years are probably instances of errors in record-keeping by the Criminal Court Clerk. As for bastardy and domestic informations, housing jury

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*Using the special definition of "defendants" given on the preceding page.

trials, and defective delinquent determinations, these are included in Table 8 mainly for the sake of completeness. No more will be said about these here, except that they are part of the workload of the Criminal Court but do not require the same kind of intensive calendar management which indictments and appeals require.

The most important subjects to which Table 8 relates are the size of the backlog of criminal cases, and the age distribution of the cases in that backlog. First, let us consider the backlog of indictments; the total is 5,816 cases, in which 7,465 defendants were involved. Does this agree with the official figures? There is no official backlog figure for July 3, 1970, but the official figure for indictments open as of January 1, 1970, is 6,730 cases (see 1969 Annual Report of the State's Attorney's Office). Since the general trend in this figure has been upward in recent years, we can infer that if a backlog had been computed in the same manner for July 3, 1970, it would have been more than 6,730 cases. Hence, the CMS benchmark inventory count of open indictments as of July 3, 1970 is 5,816 cases; this is considerably lower than the official count, which is in excess of 6,730. Court Management Systems places considerably more confidence in its own figure even though that figure probably has a small percentage of error in it, on the order of 1%. The reason for the doubt about the official figure is that it is a cumulative figure; rather than being computed "from scratch" by a yearly inventory, it is computed by taking the previous year's backlog, adding the

new cases during the year, and subtracting the disposed cases. Thus the errors in computation over the years are retained. Furthermore, there is evidence that these errors tend to be errors of inclusion rather than errors of exclusion. There appears in Criminal Court records (and probably the same is true in State's Attorney's Office records as well) a tendency to fail to record the fact that a case has been disposed, even though it is no longer part of anyone's workload.

In other words, 58% of the indictment backlog cases are seven months or older. Does this contradict what was said in Section 5 above, i.e. that the median disposition time of Criminal Court cases is five and one-half to six months? It does not, because the disposition time figures are based on disposed cases only. The 3,382 open indictments which were seven months or older as of July 3, 1970 could not have been reflected in the disposition figures at that time.

A reasonable interpretation of the age distribution of open indictments is that there has been a recent (within less than five years) and rapid (see Part IV of this Report) growth of backlog--so rapid in fact that the backlog cases are not yet appearing in the disposition time statistics. It is also probably true that within this backlog, there is a "hard core" of cases--constituting perhaps 10% or 15% of the backlog at any given time--which remain undisposed for two years or more, but are really "dead" in the sense that they have permanently dropped out of regular court and prosecutorial

processing, either because the defendants are non-triable or for some other reason. Without further analysis of Criminal Court data, however, we do not yet know how to reduce this "hard core" of troublesome cases. This will, in the long run, be one of the most important tasks of the new Supreme Bench Criminal Assignment Office.

The aging of appeals from Municipal Court (row 4) is as follows: 0 to 6 months, 52%; 7 to 18 months, 38%; and 19 months or more, 10%. Probably the differerce in age distribution between appeals and indictments can be explained by the fact that a much lower percentage of the appeal defendants (1%) are non-triable. Still, as with indictments, there appears to be a "hard core" of undisposed appeals.

c. Growth of indictment backlog

The only other count of open indictments previous to that of Court Management Systems is that of Milton Allen, who was at the time Chairman of the Criminal Courts Committee of the Baltimore City Bar Association. His count is published in an excellent study (Baltimore City Bar Association Journal, January 1968, pp. 31-42), which displays a penetrating insight into the problems of the Criminal Court, and with which the study group has found itself in agreement on most points.

Mr. Allen, without benefit of the kind of staff and computer support

the CMS study group has had, undertook his count* of open cases using a few of his law office clerical staff as of December 9, 1967. For indictments, he counted 2,014 open cases. Mr. Allen defined "open" somewhat more strictly than this Report does. He included any case with an undisposed defendant (as defined here) or a triable defendant; his definition of "triable" was the same as the one used here except that the sub curia status was excluded, i.e. the status of being convicted and awaiting sentence. Hence his count would not include a case with one defendant who is sub curia, whereas this Report's count would. Also, Mr. Allen's count is in terms of cases, not "defendants" as defined in Table 8.

To compare the indictment backlog case count of Table 8 with Mr. Allen's count, the Table 8 figure of 5,816 must be reduced somewhat. Six hundred seventy of the defendants involved in those 5,816 cases were non-triable; the largest number of cases which would be non-triable would be (assuming one such defendant per case) 670. Subtracting 670 from 5,816 leaves us with at least 5,146 cases with triable defendants. We must further reduce this to reflect the number of sub curia defendants. These have not been counted by computer as yet, but they could reduce the case count by at

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*Mr. Allen also computed age distributions, which were, interestingly, quite close to the one shown in Table 8. He found about 39% of the indictment backlog cases to be from 0 to 6 months old, about 47% to be from 7 to 18 months old, and about 14% to be 19 months or more.

most 5%. Five percent of 5,146 is about 260; hence the final case count comparable with Mr. Allen's figure is at least 4,886. If Mr. Allen's figures are approximately correct, as we believe they are, it would appear that an astonishing growth in indictment case backlog has occurred over a period of 19 months (December 9, 1967 to July 3, 1970): from 2,014 cases to at least 4,886 cases, excluding those with disposed, non-triable, or sub curia defendants.

The conclusion to be drawn from this attempt to measure the growth of backlog is that the evidence indicates a rapid growth in the last two years, and therefore, that the new Criminal Assignment Office is faced with a deteriorating situation. Improved programs of calendar management should therefore be implemented without delay.

TABLE 1.**ARRESTS IN 1969 BY DISTRICT AND CATEGORY

District	1. Non-Serious	2. Serious	3. Total	4. Transferred to Criminal Court (Estimate)	5. Beyond Trial Jurisdiction of Mpl. Ct.(Est.)	6. Total Minus Column 5	7. Caseload Under Re-org.(Est.)
C	4,041	6,369	10,410	1,871	1,347	9,063	9,063
S	2,465	3,349	5,814	869	626	5,188	8,074(S+SW)
*SW	1,283	2,006	3,289	559	403	2,886	0
AREA 1	7,789	11,724	19,513	3,299	2,376	17,137	17,137
W	2,452	4,411	6,863	1,304	938	5,925	5,925
NW	1,461	2,914	4,375	789	568	3,807	6,253(NW+N)
*N	1,189	1,665	2,855	567	409	2,446	0
AREA 2	5,102	8,991	14,093	2,660	1,915	12,178	12,178
E	1,869	3,594	5,463	1,206	868	4,595	7,232(E+NE)
*NE	1,194	1,839	3,033	550	396	2,637	0
SE	3,052	3,614	6,666	1,002	722	5,944	5,944
AREA 3	6,115	9,047	15,162	2,758	1,986	13,176	13,176
Proposed New Preliminary Hearing Court	---	---	---	---	---	---	6,277
GRAND TOTAL	19,006 (39%)	29,762 (61%)	48,768 (100%)	8,717 (18%)	6,277 (13%)	42,491 (87%)	48,768

PRESENT Average for Nine Districts: 5419 (15/day)
Low: 2,855 (N)
High: 10,410 (C)

PROPOSED Average for Six Districts: 7081 (19/day)
Low: 5,925 (W)
High: 9,063 (C)

*Districts where judge sittings will cease under recommendations of this Report.
**Traffic arrests are excluded.

TABLE 1A. CASES HELD FOR GRAND JURY BY MUNICIPAL COURT, MONTH OF DECEMBER 1970
(Housing Cases Excluded)

Beyond trial jurisdiction	328 (72%)
Jury trial prayed	59 (13%)
Jurisdiction waived and companion cases	71 (16%)
TOTAL	458 (100%)

TABLE 2. CASE DISPOSITIONS IN MUNICIPAL COURT, CRIMINAL DIVISION IN 1969

	Committed in Default of Fine	Fines Paid	Commitments	Probation Before Verdict	Dismissed or Acquitted	Held for Grand Jury	Probation	Held for Mental Exam	Fine & Term Suspended	Fine and Term Imposed	Other Term or Disposition	TOTALS
C	1124	971	1127	1496	1914	2132	722	868	784	13	998	12149 (22%)
N	153	336	276	427	534	632	211	163	219	5	135	3091 (5%)
E	490	688	522	593	1276	1378	363	248	370	11	208	6147 (11%)
S	626	798	526	1066	1123	1050	481	501	431	22	355	6979 (12%)
W	815	1064	658	804	1276	1487	291	442	493	39	335	7704 (14%)
NE	156	435	181	602	680	625	347	131	230	-1	153	3539 (6%)
NW	402	575	311	870	878	924	405	178	257	17	219	5036 (9%)
SE	817	997	567	943	1412	1143	263	469	389	4	478	7482 (13%)
SW	301	626	202	716	784	715	266	283	116	6	161	4176 (7%)
Totals	4884 (9%)	6490 (12%)	4370 (8%)	7517 (13%)	9877 (18%)	10086 (18%)	3349 (6%)	3283 (6%)	3289 (6%)	116 (0%)	3042 (5%)	56303 (100%)

TABLE 3. SUPREME BENCH CRIMINAL INDICTMENTS AND DEFENDANTS IN CRIMINAL COURT, 1969

1.	Arrested defendants held for Grand Jury Action (est.)	8,717
2.	Presentments to Grand Jury (Criminal Court cases)	9,423
3.	New indictments (Criminal Court cases)	9,313
4.	Dispositions	
	a. Defendants	
	Convicted (Trial or Guilty Plea)	4,499 (53%)
	Acquitted or Dismissed	1,427 (17%)
	Probation before Verdict	227 (3%)
	Not Guilty Confessed	101 (1%)
	Stet or Nolle Prosequi	2,289 (27%)
	TOTAL	8,543 (100%)
	b. Indictments (Criminal Court cases)	
	Convicted (Trial or Guilty Plea)	3,996 (51%)
	Acquitted	1,129 (14%)
	Dismissed	24 (0%)
	Probation before Verdict	255 (3%)
	Not Guilty Confessed	86 (1%)
	Stet or Nolle Prosequi	2,275 (29%)
	Other (Abated by Death, Nolo Contendere, Warrant Quashed)	44 (1%)
	TOTAL	7,809 (100%)
5.	Trials by Jury	
	a. Defendants tried by jury	312 (4% of 8,543)
	b. Cases tried by jury	[not available]

TABLE 4. CRIMINAL COURT: NOT GUILTY CONFESSED, STET, NOLLE PROSEQUI, DISMISSED, OR PROBATION BEFORE VERDICT AS PERCENTAGE OF TOTAL INDICTMENT DISPOSITIONS

Year	Percentage
1960	18%
1961	18%
1962	19%
1963	18%
1964	15%
1965	24%
1966	22%
1967	29%
1968	32%
1969	34%
1970	42%*

*This does not include 703 indictments disposed by stet and nolle prosequi on December 28, 1970. With that 703 included, the 1970 figure would be 54%.

TABLE 5. MUNICIPAL COURT: NOT GUILTY CONFESSED, STET, NOLLE PROSEQUI, DISMISSED, ACQUITTED, OR PROBATION BEFORE VERDICT AS PERCENTAGE OF TOTAL DISPOSITIONS

Year	Percentage
1965-66	23%
1966-67	26%
1967-68	30%
1968-69	31%

TABLE 6. MUNICIPAL COURT, CRIMINAL DIVISION - APPLICATION FOR WARRANTS AND INFORMAL HEARINGS

	Applications for Warrants Actual 1 Sep. 68 - 31 Aug. 69	Applications for Warrants Under Rec. Reorganization	Informal Hearings Actual 1 Sep. 68 - 31 Aug. 69
C	2,751	2,751	46
S	2,456	4,314 (S+SW)	99
*SW	1,858	0	132
AREA 1	7,065	7,065	277
W	4,773	4,773	89
NW	4,029	5,424 (N+NW)	85
*N	1,395	0	94
AREA 2	10,197	10,197	268
E	2,419	4,170 (E+NE)	52
*NE	1,751	0	146
SE	2,495	2,495	122
AREA 3	6,665	6,665	320
GRAND TOTAL	23,927	23,927	865
Average	2,659	3,988 (6 Courts)	96
LOW	1,395 (N)	2,495 (SE)	46 (C)
HIGH	4,773 (W)	5,424 (NW)	146 (NE)

*Judicial service minimal under recommendations of this Report.

TABLE 7. AVERAGE NUMBER OF MONTHS FROM FILING TO DISPOSITION* IN CRIMINAL COURT FOR ALL CRIMINAL CASES

Source: 1968-69 Annual Report of the (State) Administrative Office of the Courts.

YEAR	JURY TRIAL**	Dispositions other than Jury Trial
1962-63	4.4	2.3
1963-64	5.4	3.1
1964-65	4.3	2.7
1965-66	3.0	1.8
1966-67	5.8	3.1
1967-68	6.8	4.0
1968-69	6.6	5.1

* Does not include time from arrest until filing of indictment or information, and time from conviction to sentencing.

** Only 4% of dispositions of indictments (the major criminal case category) are by jury trial.

TABLE 8. OPEN CRIMINAL CASES IN SUPREME BENCH AS OF JULY 3, 1970: CROSS - TABULATION BY CATEGORY OF CASE, YEAR FILED, AND "TRIABILITY"

CATEGORY	1970		1969		1968 & Prior Yrs.		Total		Non-Triable	
	Defendants	Cases	Defendants	Cases	Defendants	Cases	Defendants	Cases	Defends.	Percent
1. Presentments	243	186	3	3	1	1	247	190	6	2%
2. Indictments	3052	2434 (42%)	3151	2425 (42%)	1262	957 (16%)	7465	5816 (100%)	670	8%
3. Criminal Informations	0	0	0	0	0	0	0	0	0	-
4. Appeals from Municipal Court	1010	10071 (52%)	729	728 (38%)	196	196 (10%)	1935	1931 (100%)	28	1%
5. TOTAL OF ABOVE	4305	3627	3883	3156	1459	1154	9647	7937	704	7%
6. Bastardy Informations	0	0	0	0	66	66	66	66	0	0%
7. Domestic Informations	22	22	21	21	106	106	149	149	17	11%
8. "Warrants" (Housing Jury Trials)	118	104	5	5	0	0	123	109	0	0%
9. Defective Delinquent Determinations	0	0	30	30	115	114	145	144	27	18%
10. GRAND TOTAL Omitting Item (5)	4445	3753	3939	3212	1746	1440	10130	8405	748	7%

APPENDIX B:

RECOMMENDATIONS CONCERNING PRE-TRIAL RELEASE, BAIL, DETERMINATION OF ELIGIBILITY FOR PUBLICLY PROVIDED DEFENSE COUNSEL AND RELATED MUNICIPAL COURT PROCEDURES

Outline of Appendix B

Appendix B: Recommendations Concerning Pre-Trial Release, Bail, Determination of Eligibility for Publicly Provided Defense Counsel and Related Municipal Court Procedures

1. Legal Basis and Recommended Principles

On pre-trial release and bail, the Maryland statutes are clear. The Constitution (Declaration of Rights, Art. 25) provides what the U. S. Constitution provides, namely, ". . . that excessive bail ought not to be required . . .". Maryland Rules of Procedure, Rule 777, states that

> "Prior to conviction an accused who is charged with an offense the maximum punishment for which is other than capital shall be entitled to be admitted to bail. In a capital case the accused may be admitted to bail in the discretion of the court." (emphasis added)

The Maryland Annotated Code, Article 27, Section 638A, provides a strong statutory policy favoring release on personal recognizance.

> "(a) May be released before or after conviction; failure to appear.--When from all the circumstances the court is of the opinion that any accused person in a criminal case will appear as required for trial either before or after his conviction, the person may be released on his own recognizance. A failure to appear as required by such recognizance shall be subject to the penalty provided in § 12B of this article.
>
> (b) Liberal construction of section; purpose. --This section shall be liberally construed to effectuate the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of an accused person in a criminal case either before or after trial of the case.
>
> (c) Application of section.--The provisions of this section shall be applicable to any criminal case or offense except a case where death or life imprisonment without parole is a possible punishment before any judge of any circuit court in the counties or any judge of the criminal courts of Baltimore City, any people's court judge with criminal jurisdiction, any of the judges of the Municipal Court of Baltimore City, or any trial magistrate. The provisions of this section shall apply to all persons regardless of age." (emphasis added)

It is this "purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of an accused person" which is the basis of these recommendations.

On the subject of publicly provided defense counsel, Maryland Rules of Procedure, Rule 719(b), provides as follows:

> " 1. Advice by Court.
> If at any stage of the proceeding, the accused appears in court without counsel, the court shall advise him of his right to counsel.
> 2. When Required--Conditions.
> Unless the accused elects to proceed without counsel or is financially able to obtain counsel--
> (a) The court shall assign counsel to represent him if the offense charged is one for which the maximum punishment is death or imprisonment for a period of six months or more, or a fine of $500,00 or more, or both; provided that notwithstanding the foregoing, counsel need not be assigned where the offense charged is desertion or non-support of wife, children or destitute parents.
> (b) The court may assign counsel to represent the accused in any other case, and in determining whether or not to assign counsel the court shall take into consideration the complexity of the case, the youth, inexperience and mental ability of the accused and any other relevant consideration.
> 3. Request for Counsel.
> If any accused who is not financially able to obtain counsel requests assignment of counsel, the court shall assign counsel pursuant to subsection 2 of section b of this rule.
> 4. Assignment Procedure.
> The Circuit Court for any county and the Supreme Bench of Baltimore City may establish by rule appropriate local procedures to implement and regulate the exercise of the right established in section b of this Rule. These procedures may include provision for assignment of counsel by persons designated by the court or by any other reasonable method and need not require the personal presence of the defendant in court at the time of the assignment.

5. Affidavit of Indigency.
The court may require a claim of indigency by an accused seeking the assignment of counsel to be verified by a sworn statement in such form and with such content as the court designates.

6. Counsel--Extent of Duty.
When counsel is appointed by the court to represent an accused, the authority and duty of such counsel shall continue in all respects from the date of such appointment until the imposition of sentence. Thereafter counsel shall advise the accused concerning his right to appeal and his right to apply for a review of his sentence. If directed by the accused, counsel shall assist in the preparation of an application for review of sentence under Rule 762 (Review of Sentence) and an order for appeal, and shall file same over the signature of the accused."

Recently, in Coleman v. Alabama, _____U.S. _____, L.Ed.2d 387 (June 22, 1970), the U. S. Supreme Court held that the preliminary hearing is a "critical stage" in the criminal process and that, therefore, the presence of counsel is required at the preliminary hearing to protect the defendant's constitutional rights. The recommendations of this Report on a public defender system are in Appendix C. The Coleman decision is also relevant to the procedure for determining financial eligibility for publicly provided counsel; if counsel must be provided at the preliminary hearing stage, it follows that the eligibility determination must occur prior to that stage.

Important support and guidance are furnished by the American Bar Association's Standards Relating to Pretrial Release* and Standards Relating to Providing Defense Services (drafts approved by the ABA House of

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* These will be referred to in later sections of this Appendix as "ABA Standards."

Delegates in 1968). With respect to money bail, the thrust of the pre-trial release standards is that "Money bail should be set only when it is found that no other conditions on release will reasonably assure the defendant's appearance in court," that "Money bail should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge but should be the result of an individualized decision, taking into the account the special circumstances of each defendant," and that "No person should be allowed to act as a surety for compensation" (Sections 5.3, 5.4). With respect to the criteria, time, and method of determining eligibility for publicly provided defense counsel, the ABA Standards Relating to Providing Defense Services are as follows.

> "Counsel should be provided to any person who is financially unable to obtain adequate representation without substantial hardship to himself or his family. Counsel should not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond." (Section 6.1)

> "A preliminary and tentative determination of eligibility should be made as soon as feasible after a person is taken into custody. The formal determination of eligibility should be made by the judge or by an officer of the court selected by him. A questionnaire should be used to determine the nature and extent of the financial resources available for obtaining representation. If at any subsequent stage of the proceedings new information concerning eligibility becomes available, eligibility should be redetermined." (Section 6.3)

We recommend that the Court of Appeals, by rule, adopt the following principles concerning criminal cases in the criminal courts of Baltimore City.*

a. Financial status should be no bar to release before trial; not only the "deserving" poor but all criminal defendants charged with offenses mentioned in Rule 719(b) of the Maryland Rules** are entitled to a determination of their eligibility for pre-trial release. This determination should occur within six hours of arrest, be conducted by a judicial officer, and, if the judicial officer is not a judge, be reviewed by a judge at the first court appearance.

b. Defense counsel should be provided to any criminal defendant charged with an offense mentioned in Rule 719(b) of the Maryland Rules who is financially unable to obtain adequate representation without substantial hardship to himself or his family, and not denied for the sole reason that the defendant is capable of posting bond. The determination of eligibility for publicly provided defense counsel should occur within six hours of arrest, be conducted by a judicial officer, and, if the judicial officer is not a judge, be reviewed by a judge at the first court appearance.

c. Pre-trial release can be unconditional or can involve any of a variety of conditions, some of which are supervision of the type now maintained by the Pre-Trial Release Division of the Supreme Bench, release in the custody of individuals or agencies, "reasonable restrictions on the activities, movements, associations and residences of the defendant"

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*Pre-trial release of traffic and housing defendants is not intended to be covered by these principles or by the recommended procedures which follow. As explained in Section 6(b) below, further study is needed of pre-trial release of traffic defendants. The only recommendation herein concerning traffic pre-trial release is that the State Insurance Commissioner regulate bail bonding; see Section 6(c) below.

**This limitation will not mean much hardship for non-Rule 719(b) defendants, since most are tried on the day of arrest; it is also necessary to keep the expenses of the program at a reasonable level.

(ABA Standard, Section 5.2(b)(iii)), and the execution of a bond, unsecured or secured by pledge of property or by deposit of part or all of the cash amount of the bond.

d. The decision as to whether, and under what conditions, pre-trial release shall be granted should depend on a determination of whether there is a substantial risk of non-appearance in court and whether there is a substantial risk of endangering the public or any specific persons. In making this determination, the following factors should be considered:

- The community roots of the defendant including the stability of his residence, his employment status and history, family ties, and reputation;
- The defendant's financial status;
- Known abnormalities of the defendant such as drug addiction, alcoholism, or severe psychological disorders;
- The defendant's criminal record (if any), the nature of the present charges against him, the strength of the evidence, and any mitigating or aggravating circumstances.

Verification of responses to interviews concerning the above factors shall be required. Procedures of verifications shall be specified by the director of the pre-trial release program.

e. The objective of specifying procedures of interview verification, of setting conditions of release, and of release supervision, should be to reduce the frequency of non-appearance and of criminal behavior while on release to a tolerable minimum.* The possibility should be thoroughly explored of employing an automated system of release supervision to permit continual checking of the facts upon which the release decision was based, and to alert the court of any significant change. Statistics should be maintained and periodic reports produced showing the amount of non-appearance and criminal behavior while on release. If the latter becomes unacceptably high, stricter standards of pre-trial release and supervision must be adopted.

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*See Section 5 below on statistics of current pre-trial release program.

f. Bail (the execution of a bond) should be a last resort, employed only if it appears to be the sole means of guaranteeing the criminal defendant's subsequent appearance; the amount of the bond and the cash deposit or property pledge required should depend on the factors in (d) above.

g. The present long-outdated lists entitled "Classification of Cases for Bail," which indicate a fixed bail amount for each type of criminal offense charged, should no longer be used for bail setting in Municipal Court or Supreme Bench. The present practice of receiving of court appearance deposits by police (Md. Ann. Code, Art. 26, Sec. 120(4)) should cease.*

h. If the execution of a bond is required as a condition of pre-trial release of a criminal defendant, no compensated surety or professional bail bondsman should be allowed to execute it. Any person executing a bond for three separate defendants within one year should be considered a compensated surety. The courts should continue, as at present, to accept required pledges of property or deposits of cash or securities, hold these in special accounts, and return them to the defendant or uncompensated surety at the time of trial. Such pledges and deposits should no longer be accepted by policemen.

i. The general policy of the State's Attorney should be to encourage the release of defendants before trial.

j. If the released defendant fails to abide by the terms of his release, or if information on which release was based if found to be false or not longer substantially correct due to a change in the defendant's status, or if the defendant is arrested or indicted for a subsequent alleged offense, the court may consider change of release conditions or revocation of release.

k. The defendant should be informed, by means of a written statement given to him immediately after arrest, and again at his first court appearance, of his rights to silence, counsel, communication, preliminary hearing, pre-trial release determination (see below section 2(2)), trial by jury, indictment (if applicable), and waiver of indictment under Rule 709.

l. The defendant can give us his right to publicly provided defense counsel only if he intelligently waives it. The definition of what constitutes intelligent waiver should be strict. The

*See explanatory note on bail following these principles.

study group adopts these sections of the ABA Standards Relating to Providing Defense Services:

"The accused's failure to request counsel or his announced intention to plead guilty should not of itself be construed to constitute a waiver. An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the accused's comprehension of that offer and his capacity to make the choice intelligently and understandingly has been made. No waiver should be found to have been made where it appears that the accused is unable to make an intelligent and understanding choice because of his mental condition, age, education, experience, the nature or complexity of the case, or other factors." (Section 7.2)

"No waiver of counsel should be accepted unless it is in writing and of record. If a person who has not seen a lawyer indicates his intention to waive the assistance of counsel, a lawyer should be provided to consult with him. No waiver should be accepted unless he has at least once conferred with a lawyer. If a waiver is accepted, the offer should be renewed at each subsequent stage of the proceedings at which the defendant appears without counsel." (Section 7.3)

EXPLANATORY NOTE ON BAIL: Principle (h) above envisions the continued role of the criminal courts in accepting and returning pledges of property and deposits when bail bond is imposed as a condition of release. Principles (g) and (h) put an end to pre-trial release by the police and the functions of the professional bail bondsman, so far as the criminal defendant is concerned. We do not expect, however, that the court's burden of receiving, accounting for, and returning bail will be substantially increased by adoption of the above principles. We expect that most of the criminal defendants now released on bail--either with the services of a professional bondsman or by direct pledge or deposit to the court--will be released without bail through the operation of a

greatly expanded pre-trial release program. When bail is imposed as a condition of pre-trial release, the services of Pre-Trial Hearing Officers and Court Clerks can be employed to expedite the handling of bail by the court. The staffing in Section 3 below provides amply for coverage of the Municipal Courts every night of the week by Pre-Trial Hearing Officers, who are officers exercising delegated judicial authority and whose duties are identical with those of the Commissioners provided for in the recent District Court Constitutional Amendment.

The present pre-trial release powers of policemen and clerks are found in the following statutes and court rules. Art. 26, Sec. 120(4) of the Code gives the police the power to accept surety deposits and release Municipal Court defendants charged with offenses punishable by fine and not imprisonment or with violations of Art. 27, Sec. 388 (manslaughter by automobile, etc.). Rule IX and IXA of the Municipal Court Rules give clerks the power to receive bail when court is not in session according to the "list" which we recommend be discontinued (see Principle (g) above). Art. 26, Sec. 33 (a) of the Code allows clerks of the Criminal Court to receive bail when the court is not in session, where the amount of bail has been fixed beforehand by a judge; the practice has been to let the "list" function as a fixing, in advance, of bail amounts for all categories of offenses.

The effect of the recent District Court Constitutional Amendment and Senate Bill No. 6 of 1970 (Sec. 154(c)) is, as we interpret it, to give the Commissioner exclusive pre-trial release powers when Municipal

Court is not in session. Thus, Art. 26, Sec. 120(4), being inconsistent, is repealed by implication. The same is true of Rules IX and IXA of the Municipal Court Rules; in any case, however, these rules can be nullified by Court of Appeals rules. The bail-receiving powers of clerks in Criminal Court are, of course, untouched by Senate Bill No. 6, which only affects the lower criminal court. Our recommendations below provide for Pre-Trial Hearing Officers (i.e., Commissioners) in the lower court, who would, among other things, have exclusive pre-trial release powerwhen the court is not in session. Senate Bill No. 6 (Sec. 149) clearly permits the clerks of the new District Court to receive, account for, and refund bail, and this can be required by rule of the District Court or the Court of Appeals. In the Criminal Court, our recommendation would not conflict with the bail responsibilities of the clerks, who could, in fact, continue to handle the receiving, accounting, and refunding of bail, once bail has been imposed as a condition of pre-trial release by the judge.

EXPLANATORY NOTE ON PRESENT PROCEDURE IN CRIMINAL DIVISION OF MUNICIPAL COURT: Typically, the defendant is arrested, brought to the station house in the district of arrest, and booked by the arresting officer and desk sergeant. In the majority of cases, arrests are made without warrants; unlike other courts of limited jurisdiction in Maryland, Municipal Court does not issue a warrant (i.e., decide whether there is a probable cause basis for the arrest)

after a no-warrant arrest has occurred. An arrest report is prepared with the specific charge, as drawn by the police, which then becomes the basic individual case paper for the case. There is little, if any, participation by the prosecutor in drawing the charge. If booking is completed by approximately 2 p.m. that day, the case is put on the docket of the court located in the station house and the defendant has his first court appearance that day. If booking is completed at a later time, the case will normally be put on the docket for the following day; in this situation, the defendant can obtain overnight pre-trial release only by posting night bail with the clerk according to the "list" described above, or, if he is charged with certain offenses, by deposit of surety with the police as provided by Art. 26, Sec. 120 (4) of the Code. There is no opportunity for pre-trial release without bail when the court is not in session.

During the day, from 7:30 a.m. on, defendants in the station house are interviewed for possible pre-trial release and eligibility for the services of the present interim public defender. Since the pre-trial release program is currently limited to defendants whose destination is Criminal Court, only those defendants likely to be transferred to Criminal Court are interviewed, i.e., those charged with a felony, or those of whom it is known will request a jury trial or be transferred to Criminal Court for some other reason. The pre-trial release interview involves an investigation of the type described in Section 5 below; all responses

are verified, and a recommendation is made to the judge. The interim Legal Aid Bureau Public Defender program serves misdemeanor as well as felony defendants. In theory, all indigent felony defendants are represented at preliminary hearings, but there is considerable evidence to show that, in fact, a substantial number are unrepresented, which is probably due to the inadequate explanation to the defendant of his right to free defense counsel and to the automatic acceptance of waiver of the right (see Appendix C, Section 2 of this Report). With respect to indigent misdemeanor defendants, there is no doubt that a large number are unrepresented. As to the interview regarding indigency for public defender purposes, it consists of questions about income, following the Legal Aid Bureau--Office of Economic Opportunity standard (see Section 3(b) of Appendix C of this Report). Normally, the responses are not verified.

At the defendant's first court appearance, one of three things will happen: he will (1) be tried for a Municipal Court offense; (2) have his case postponed for future trial in Municipal Court; or (3) have a preliminary hearing. In the first two situations, he has only a 26% chance* of obtaining counsel at other than his own expense. In the third situation, he will have about a 41% chance** of being represented by counsel at the

*This is based on an estimate of 10,600 indigent Rule 719(b) misdemeanor defendants per year tried in Municipal Court, and an estimate of 2800 such defendants per year represented by the present public defender program, computed by extending present weekly intake of this program over a full year.

**This is based on an estimated 4400 indigent preliminary hearing defendants per year, and an estimated 1800 represented by the public defender program.

preliminary hearing if he has been determined to be indigent. With respect to pre-trial release without bail, the judge may grant it in the first two situations, but normally there will have been no previous interview by a pre-trial release investigator. In the third situation, there is a good chance that the defendant will have been interviewed for pre-trial release prior to the preliminary hearing.

At the preliminary hearing, the defendant can be dismissed, held for Municipal Court trial on reduced charges, or be transferred to the Criminal Court for Grand Jury action. If the latter occurs, or if the defendant's case is postponed for trial in Municipal Court, the judge will either commit the defendant to City Jail or grant him bail or pre-trial release without bail (both of the latter are known as "recognizance"). Thus, the formal paper which transfers the defendant to Criminal Court is either a "Recognizance" or a "Commitment." On the back of this paper are the offenses charged, the names and addresses of the defendant and the witnesses in the case, and a space for recording the action of the Grand Jury. It should be noted that there is no formal complaint prepared at this stage.

2. Specific Procedural Recommendations

We recommend that the procedures recommended for the Municipal Court, described below as a series of steps, be adopted by rule of the Court of Appeals.

While the emphasis of the recommended procedures and staffing is on the Criminal Division of Municipal Court, a relatively small amount of manpower is assigned to Criminal Court and City Jail (see Staffing Table, Section 3(b)) to handle the small number of criminal defendants who have not received pre-trial release and counsel eligibility determinations in the lower courts. The basic procedure should be the same in Criminal Court and City Jail as in Municipal Court: interview followed by a hearing to determine eligibility.

An explanation is necessary of a phrase frequently used in the procedures below--"cases beyond the trial jurisdiction of Municipal Court." At present, this phrase denotes a category consisting mostly of felonies, but includes certain misdemeanors, e.g., Malicious Destruction over $500, and excludes certain felonies, e.g., Larceny from $100 to $500; see Md. Ann. Code, Art. 26, Sec. 109 at seq. With regard to the future criminal jurisdiction of the new District Court, this category will simply be the class of all felonies (see Chap. 528 of the Laws of Maryland 1970, Sec. 145(b)).

The procedures listed below should be thought of within the context of a Municipal Court reorganized as described in Appendix A, Section 4,

i.e., with six locations rather than nine, and a specialized court for all preliminary hearings. However, in the event that the recomended reorganization of Municipal Court fails to achieve acceptance, the procedures and staffing indicated below will still be adequate to give substantial effect to the principles in Section 1.

(1) Immediately after arrest, booking will occur in the police station; this consists of making the police report of the arrest, including the initial statement of charges. In a large percentage of cases, booking will be at night from 8 p.m. to 4 a.m. Subsequent to booking, screening by the prosecutor of the arrest and preparation of a formal complaint* will occur. If the defendant is not released prior to trial, this should normally be completed in time for court the next day to avoid delay and overcrowding of lockups.**

*This formal complaint, a copy of which will be supplied to the Municipal Court, will be the individual case paper for the case. It will show the names and addresses of the defendant, witnesses, and counsel; names of the arresting officer and the prosecutor who drafted the complaint; the facts of the arrest; and the offenses charged after screening by the prosecutor. It will have the space to show the outcome of the counsel eligibility determination, the dates and outcomes of each court appearance, any postponement dates, the defendant's pre-trial release status, and whether he has been informed of, and has understood his rights to silence, counsel, etc. (see (2) below). It will also show, by a check in an appropriate box, whether he is transferred to Criminal Court and, if so, by what route (felony charge, request for jury trial, concurrent jurisdiction, etc.), and whether he has waived indictment.

**For defendants arrested at night, the task of screening and preparation of complaints by the next morning could, for example, be handled by a nighttime staff of prosecutors who would visit districts when dispatched from a central office, which would make hourly inquiries to determine what arrests had occurred in each district. In this way the hardship of night duty could be minimized and distributed equally.

Until the formal complaint is prepared by the prosecutor, the case will not be placed on the court docket and the first court appearance will not occur; however, pre-trial release and counsel eligibility determinations described below should proceed on the basis of the initial police charges, and not await the completion of prosecutorial screening.

(2) Immediately after arrest, and again at first court appearance, the defendant will be informed by means of a written statement, a copy of which is given to him, of the following:

- That he is not required to say anything, and anything he says may be used against him.
- That he has the right to counsel.
- That counsel will be provided to him if he is indigent (applicable only to defendants charged with Rule 719(b) offenses).
- That he has a right to communicate with his counsel, family, or friends, and that there is a telephone in the police station for his use, limited to three calls.
- That he has a right to a preliminary hearing (applicable only to defendants charged with offenses beyond the trial jurisdiction of Municipal Court).
- That he has a right to determination of eligibility for pre-trial release (applicable only to defendants charged with Rule 719(b) offenses).
- That he has a right to a trial by jury in the Criminal Court, which is located in downtown Baltimore, and that such a trial may require several months to complete.
- That, if charged with any felony, he has a right under Rule 709 to waive Grand Jury indictment and thus shorten the time required to dispose of his case.

The pre-trial hearing officer* and the judge before whom the

*"Pre-trial hearing officer" is equivalent to the title "Commissioner" in the recent District Court Amendment to the State Constitution, Chapter 789 of the Laws of Md. of 1969.

defendant has his first appearance will question the defendant to make sure that he can read English and understands the written statement of his rights.

(3) The prosecutor, after reviewing the facts of the arrest, will determine whether any of the charges is beyond the trial jurisdiction of Municipal Court. If there is no such charge, the next step will be to determine whether all charges are Rule 719(b) offenses. This will be done by a pre-trial release investigator. (Charges excluded from Rule 719(b) include Begging, Vagrancy, License Law Violations, Park Rule Violations, Ticket Scalping, and the like.) The State's Attorney's Office will furnish a list of Rule 719(b) offenses to each investigator.

(4) Within six hours of arrest, if any charge against the defendant is a Rule 719(b) offense, he will be interviewed to determine his eligibility for pre-trial release and for publicly provided defense counsel. Attached to the interview will be a summary of the defendant's criminal record, if any, to be obtained by telephoning the pre-trial release clerk at the Police Department Central Records Office (see staff recommendations below). The investigator will complete the investigation by verifying the interview responses as soon as possible by telephone calls from the police station, or by other means; verifications should be complete no later than 24 hours after arrest.

(5) If the defendant's investigation is completed at a time when the Municipal Court in the district of arrest is closed or not in session, a pre-trial hearing officer will determine whether there is probable cause that the defendant committed an offense, and, if the defendant is charged with any Rule 719(b) offense, decide whether and under what conditions pre-trial release will be granted, and whether defense counsel will be provided at public expense. Unless the defendant is charged with a case beyond the trial jurisdiction of Municipal Court, the pre-trial hearing officer will then set a date for the first court appearance of the defendant. If the defendant is released, this can be a future date; if the defendant is jailed, the date should be no later than the next day. If the court is in session, the judge will make the probable cause and pre-trial release determination, with the assistance of a pre-trial hearing officer if needed.

DEFENDANTS NOT TRIABLE BY MUNICIPAL COURT:

(6) If the defendant is charged with an offense not triable by Municipal Court, he will either be released or spend the night in the police station lockup.* The next morning he will appear in the Preliminary Hearing Court in the Central District. At that time, he will again be informed of his rights as described above. (If his pre-trial release and counsel eligibility investigation is not yet completed and in the judge's hands, a postponement will be granted; as soon as the investigation is completed, the defendant will reappear in the same court.) If the defendant is not yet represented by counsel, the court will then decide whether he will have counsel at public expense. If a pre-trial hearing officer has already made this decision, the court will review it and approve it unless it is clearly erroneous.

Further steps will not be taken unless the felony defendant has counsel or intelligently waives it (see ABA Standards, Section 4.3(d)). If it is necessary to postpone the case so that the defendant can obtain private counsel, the court will first decide whether and under what conditions the defendant will be released. This includes review of the prior decision, if any, of the pre-trial hearing officer.

(7) As soon as counsel is present or intelligently waived, the Preliminary Hearing Court will conduct the preliminary hearing. If the defendant is not discharged as a result of this hearing, the court will then make a pre-trial release determination, which includes a review of the prior decision, if any, of the pre-trial hearing officer.

(8) If the Preliminary Hearing Court finds that there is probable cause that the defendant has committed an offense beyond the trial jurisdiction of Municipal Court, the defendant will be released, if release has been approved, or committed to City Jail;

*Prosecutorial screening will occur in the district of arrest. The ideal method would be to take felony defendants immediately to the centralized Felony Preliminary Hearing Court lockup, and have a special prosecutorial team concentrate on these defendants. This will not be possible until a new court facility for the Central District is built, with two courtrooms and additional lockup space.

his papers* will be immediately forwarded to the Criminal Court Clerk's Office. The defendant will be informed of his right to waive Grand Jury indictment and thus speed his trial; is he wishes to waive, he will indicate it by his signature on the complaint paper in a designated space.

If the Preliminary Hearing Court does not find probable cause that such an offense was committed, but does find probable cause that another offense was committed, the defendant will be sent to the other (trial) court in the Central District and tried or otherwise handled there as described in (12) below.

DEFENDANTS TRIABLE BY MUNICIPAL COURT:

(9) If the defendant is not charged with any offense beyond the trial jurisdiction of Municipal Court, he will either be released or spend the night in the lockup of the police station in the district where he was arrested. The next morning he will normally appear in the Municipal Court in the same district or the designated adjacent district (see Appendix A, Section 4) if no judicial service is provided in the district of arrest. At that time, he will again be informed of his rights as described in (2) above.

If the defendant's pre-trial release and counsel eligibility investigation is not yet completed and in the judge's hands, a postponement will be granted. As soon as the investigation is available, the defendant will reappear in the same court.

(10) If the defendant believes he is eligible, the court will then decide whether he will have counsel at public expense. If a pre-trial hearing officer has already made this decision, the court will review it and approve it unless it is clearly erroneous.

If the defendant is charged with any Rule 719(b) offense, further steps will not be taken unless he has counsel, or intelligently waives it. If it is necessary to postpone the case so that the defendant can obtain private counsel, the court will first decide

*These papers include the formal complaint, the commitment or recognizance, and a copy of the arrest report.

whether and under what conditions the defendant will be released. This includes review of the prior decision, if any, of the pre-trial hearing officer.

(11) If it has not already done so, the court will next make a pre-trial release determination, including review of any prior decision by a pre-trial hearing officer.

(12) The court will then inquire whether the defendant prays a trial by jury. If so, the court will determine probable cause, and either dismiss the case or immediately transfer it to Criminal Court. (Md. Ann. Code, Art. 26, Sec. 111) The case can also be transferred to Criminal Court on a variety of grounds provided in Md. Ann. Code, Art. 26, Secs. 109-115. If the case is not transferred, the court will proceed to try it. If the defendant is transferred to Criminal Court, he will be released, if release has been approved, or else committed to City Jail. His papers will be forwarded immediately to the Clerk of Criminal Court.

3. Required Staff, Costs, and Facilities for Pre-Trial Release and Counsel Eligibility Determinations

We recommend that the staff indicated below be administered by the new Administrative Officer of the Eighth Judicial Circuit (whose office is recommended in Part VI of this Report), with the exception of pre-trial hearing officers. These officers correspond to the commissioners provided by the recent District Court Constitutional Amendment (Ch. 789 of the Laws of Md. of 1969) and Senate Bill No. 6 of 1970 (Ch. 528 of the Laws of Md. of 1970). The Commissioners must be appointed by the Administrative Judge of the Baltimore City District Court (successor to the Municipal Court), and must hold office at the pleasure of the Chief Judge of the (state) District Court (Md. Ann. Code, Art. 26, Sec. 154, as amended by Senate Bill No. 6 of 1970). We recommend that the Administrative Judge of the Baltimore City District Court exercise his supervisory power with respect to the Commissioners consistent with the recommendations of this Report, especially the procedures in Section 2 of this Appendix. The commissioners have other duties besides pre-trial release; the constitutional amendment gives them responsibility for informing defendants of their rights and for issuing arrest warrants, and we recommend that their responsibility be extended, by rule of the Administrative Judge of the Baltimore City District Court, to include determinations of eligibility for publicly provided defense counsel. Since hours of activity with respect to issuing warrants usually coincide with

hours of pre-trail release activity, we further recommend that the Administrative Judge of the Criminal Division and the Administrative Officer of the Eighth Judicial Circuit coordinate their supervision of investigators and commissioners with respect to hours and locations of duty, and that the assignment of commissioners be heaviest during the heavy arrest period (8 p.m. to 4 a.m.) as indicated in the staffing figures below.

We recommend that the present wasteful practice of assigning specific men to specific locations for long periods of time be eliminated; that manpower be pooled and dispatched to locations as needed; and that hourly canvasses by telephone be made from a central dispatching office to determine how many defendants have been booked in each police station.

a. Functions of a new staff.

- Clerks assigned to Police Department Central Records Office: These employees will permit the retrieval of criminal history information by telephone, rather than (as at present) only by a visit of a pre- trial release staff member to the CRO. The two clerks will work alongside Police Department employees, and will retrieve summaries of defendants' criminal histories in response to telephone inquiries from pre- trial release investigators in the field.

- Investigators: Interview for pre-trial release and counsel eligibility determinations; obtain criminal history information and attach to interview sheet; verify interview responses; assist judge and pre-trial hearing officer by explaining interview responses and other relevant information.

- Pre-Trial Hearing Officers (Commissioners): Inform defendant of his rights; make pre-trial release and counsel eligibility decisions; hear applications for, and issue arrest warrants; assist judge (when on duty during court sessions) by checking release supervision arrangements, taking bond deposits or property pledges, etc.

b. Number and cost of new staff positions.

The staffing of the present pre-trial release program is indicated in Section 5 below. The following table gives total recommended staff, and shows any increases required above present levels. The number of full-time positions is computed on the basis of suggested man-hour coverage, and assumes an average of 44 actual workweeks per year per employee.

Director	. . . 1.0 (no increase)
Supervisor of Investigators	. . . 1.0 (no increase)
Investigators	
City Jail--continue pre-trial release and counsel eligibility interviews, and interviews concerning habeas corpus for later review of release denials; one woman investigator should be assigned for work with female defendants	. . . 2.3
Supreme Bench (Criminal Court)--two investigators, 9 a.m. to 5 p.m., 5 days/week, 40 hours/week	. . . 2.4
"Rotating" coverage of SW, N, and NE Municipal Court Districts; one investigator 8 p.m. to 4 a.m., 7 days/week, 56 hours/week	. . . 1.7
For each of these five, NW, W, E, SE, S, one investigator, 9 a.m. to 11 a.m. and 9 p.m. to 3 a.m., 8 hours/day, 7 days/week, 56 hours/week	. . . 8.5

New Preliminary Hearing Court; one investigator 9 a.m. to 11 p.m., 7 days/week, 97 hours/week	. . . 2.9
Central District and Pine Street Station (females and youth); 2 investigators, 9 a.m. to 11 a.m. and 9 p.m. to 3 a.m., 8 hours/day, 7 days/week, 56 hours/week	. . . 3.4
TOTAL INVESTIGATORS (Rounded)	. . .21.0 (increase of 9)

Pre-Trial Hearing Officers

City Jail--40 hours/week; make release and counsel eligibility determinations concerning defendants in City Jail	. . . 1.2
Rotating coverage of SW, N, and NE (two officers each, 56 hours/week)	. . . 2.4
NW, W, E, SE, S	. . .10.2
Preliminary Hearing Court	. . . 1.7
Central District and Pine Street Station	. . . 3.4
TOTAL PRE-TRIAL HEARING OFFICERS (Rounded)	. . .19.0 (rounded) (increase of 19)

Supporting Clerical and Secretarial Staff

Present clerical and secretarial staff	. . . 6.0
2 clerks assigned to Police Department Central Records Office, 56 hours/week	. . . 3.4
Additional support for increased investigative staff	. . . 4.6
TOTAL SUPPORTING STAFF	. . . 14.0 (increase of 8)
TOTAL POSITIONS FOR NEW PROGRAM	. . . 56.0 (increase of 36)

ESTIMATED ANNUAL INCREASE IN COST OF NEW PROGRAM

1 Director @ $15,000	$ 15,000
1 Supervisor of Investigators	12,000
19 Pre-Trial Hearing Officers @ $10,000	190,000
21 Investigators @ $9,000	189,000
14 Clerical and Secretarial Personnel @ $7,000	98,000
Total Salaries	$504,000
Other Personnel Costs (10% of salaries)	50,400
Materials, Supplies, Equipment, Travel, and Space Cost (17%of Total Personnel Cost)	94,300
Total Cost of New Program	$648,700
Less Current Cost of Pre-Trial Release Division of the Supreme Bench	($236,658)
ESTIMATED ANNUAL INCREASE FOR NEW PROGRAM	$412,042

c. Facilities needed for new program.

Without attempting a detailed description of facilities, which should be the task of the manager of the new program, it is still important to note that facilities will be needed in the Municipal Courts for interviewing and pre-trial hearings on release and counsel eligibility. There should be one telephone in each of the ten courts (the former nine plus the recommended new Preliminary Hearing Court) for the exclusive use of investigators and pre-trial hearing officers. Space will also be needed. Interviews can be conducted, for security reasons, in the lockup or in the interviewing booth which almost every lockup possesses. Some office space--enough for a desk and telephone at least--must be provided for the use of the investigator and the pre-trial hearing officer. In the three districts whose courts are closed under recommendations of this Report, the courtroom would be ideal for release and counsel eligibility hearings, and the former judge's office would supply the needed office space. In the other courts, the courtroom and judge's office could be used when the court is not in session, but when the court is in session, alternate office space must be provided.

4. Expected Release Rate and Jail Cost Saving Resulting from New Program

In estimating the impact of the new program recommended above on total pre-trial release, the percentage of defendants released under the new program can be estimated as the sum of (1) the percentage of defendants released without bail bond under the present program of the Pre-Trial Release Division of the Supreme Bench, and (2) the percentage of defendants released on bail bond under the present system. It is reasonable to include the latter because, although the criteria of professional bondsmen are not identical with the release criteria recommended here, almost all of the defendants presently released on bail bond would probably qualify for release--in most cases without bail bond as a condition--under the recommended criteria.

In 1969, 11,690 defendants were released on bail bond in Municipal Court; of these, approximately 4,000 were later transferred to Criminal Court, where, for the most part, their release was continued (although in some cases with different bail conditions). Of the total arrested defendants in 1969 (49,000), about 19,000 were charged with "non-serious" offenses, i.e., offenses other than those included in Rule 719(b) of the Maryland Rules. Almost all of these defendants had their cases disposed in Municipal Court on the day of arrest, and thus, did not seek bail bond. Of the remaining 30,000 defendants charged with Rule 719(b) offenses, we shall assume that all were "in the market" for bail bond. Thus, 11,960 of these 30,000, or 40% were released on bail bond. (This is a pessimistic estimate; some of

the 30,000 were probably tried in Municipal Court on the day of arrest and thus did not seek bail bond which would make the release rate higher.) During the history of the operation of the present Pre-Trial Release Division of the Supreme Bench, there has been a release rate of 33% of Rule 719(b) defendants (see Section 5(c) below). Therefore, the release rate which can be expected for the new recommended program is at least 33% + 40% or 73% of Rule 719(b) defendants.

Cost savings resulting from the new program can be estimated as follows. The average weekly admissions to detention (imprisonment awaiting trial in either Municipal Court or Criminal Court) in City Jail is currently about 200 defendants per week, excluding those charged with Escape and Violation of Probation. The release rate of the present pre-trial release program is 33%. At this rate, the number of releases per year of defendants who would otherwise be jailed is (200) x (52) x (33%) or 3,432 releases per year. How many man-days of detention in City Jail would this many releases per year save?

To answer this question, it is first necessary to estimate how many of the 3,432 released defendants are transferred to Criminal Court, since those transferred would (if not released) spend long periods in detention. Table 1 of Appendix A shows that about 18% of all arrested defendants are transferred to Criminal Court. The percentage of detention defendants who are transferred to Criminal Court is probably much higher. Among such defendants, those charged with felonies such as Arson, Narcotics, Assault,

Burglary, Robbery, and Homicide constitute over half the total; to be conservative, we will use 36% as the estimated percentage. The average time to disposition in Criminal Court (see Appendix A) is one-half year or 183 days. If the program recommended here were in effect, the approximate number of days in City Jail avoided for Criminal Court defendants would be (3,432) x (36%) x (183) or 226,188 days. The current cost per day of prisoner upkeep, as estimated by the Warden of City Jail, is $2.25. (This is a marginal cost; it includes food, medicines, and administrative cost, but excludes security personnel and heating.) Thus, the amount saved per year for Criminal Court defendants is about (226,188) x ($2.25) or $508,923. This conservatively estimated cost saving does not include the jail cost avoided for jailed Municipal Court defendants.

In conclusion, the additional cost of the recommended new pre-trial release and counsel eligibility program, about $412,000 per year, will be more than compensated for by the resultant saving in jail cost (about $500,000 per year).

5. Present Pre-Trial Release Program and Its Limitations

The Court Management Systems study group finds the program of the present Pre-Trial Release Division of the Supreme Bench is beneficial and well-managed, but too limited in scope, resources, and basic philosophy. The present operating philosophy--adopted no doubt because of the sensitive nature of the program when it was first introduced--seems to be that pre-trial release without bail is a privilege exclusively of "deserving" defendants who cannot afford money bail. The study group adopts the principle that financial status should be no bar to pre-trial release and that money bail should be used only as a last resort. Although the present program is narrow in scope, it has managed to interview at best about 25% of the defendants who cannot afford bail. The study group finds that all Rule 719(b) defendants can be included (those who can afford bail as well as others) by increasing staff and by using staff more efficiently on a pooled basis (see staffing recommendations in Section 3 above).

The study group further finds that the methods of interview and pre-trial release supervision employed by the present program have been successful and should for the most part be retained. We recommend, however, that a wider variety of release conditions be employed (see Section 1, Principle (a) above); it may well be possible to reduce the level of re-arrest and non-appearance by more careful tailoring of release conditions to fit each individual defendant.

The last general finding is that the present criteria of eligibility for pre-trial release interview are unnecessarily strict. We recommend that the only defendants excluded from interview be those charged with Escape and Violation of Criminal Probation (i.e., probation with respect to a non-domestic offense). We can find no justification for having Contempt, Non-Support, Paternity, Perjury, Traffic Offenses, and Violation of Probation with respect to domestic offenses (i.e., the failure to make support payments imposed as part of a probation sentence) excluded from release interview, as they presently are. In the pre-trial release determination, of course, the charge against the defendant is weighed along with other facts (see Section 1, Principle (c) above), but, with the exception of Escape and Violation of Criminal Probation, the offense charged should not be an automatic bar to release.

The following description of the present pre-trial release program should be read with the above findings in mind.

a. Present staff and emphasis

The present Pre-Trial Release Division of the Supreme Bench has a total budget of approximately $236,658 in the fiscal year 1970-71. It has a staff of twenty as of September 1970, as follows:

1	Director
1	Supervisor of Investigators
4	Senior Investigators
8	Investigators
6	Office staff
20	Total

One full-time investigator or senior investigator is assigned to each of the nine Municipal Courts; in addition to these nine, one is assigned to pre-trial release interviewing in the women's section of City Jail, one is assigned to the unit's main office for caseload maintenance work in connection with defendants on pre-trial release, and one (assigned to City Jail) handles all counsel eligibility, habeas corpus, and bail reduction matters.

Until July 1970, the Pre-Trial Release Division was primarily concerned with criminal defendants who had entered the jurisdiction of Criminal Court. Defendants were referred for interview to the unit by their attorneys, parents, or other family members. Interviews were conducted mainly in the City Jail. Since July 1970, when the unit's staff of investigators grew from eight to twelve, the emphasis has changed; most pre-trial release interviews are now conducted at the Municipal Court stage. The intake method is no longer passive. The investigator looks over the list of defendants in the lockup before court begins, and selects for interview defendants likely to be transferred to Criminal Court--those charged with felonies, those who are likely to pray a jury trial, and those with respect to whom the prosecutor is likely to pray a jury trial (because the maximum penalty exceeds the power of Municipal Court). As a general rule, defendants likely to be tried by Municipal Court are not interviewed.

The study group finds the increase in staff and the shift in emphasis to the Municipal Court to be steps in the right direction. However, probably because the intake remains limited to Criminal Court defendants, there has not been much of an increase in defendants interviewed. From the beginning of the program on August 8, 1968, through May 15, 1970, the unit averaged 45 interviews per week; after the staff increase in July 1970, this average increased, but only to 52 interviews per week. The number of arrested defendants per week averaged about 1,000 in 1969. The goal should be to interview all defendants charged with Rule 719(b) offenses, who constitute about 600 of the weekly 1,000. This requires conducting twelve times as many interviews as are now being conducted. To achieve this goal, the study group recommends not a twelve-fold increase in staff, but a much more effective use of an enlarged staff of 56 (see staffing table in Section 3 above).

b. Current operating guidelines and procedures

With respect to pre-trial release interviews, the defendants now ineligible are those charged with Contempt, Escape, Non-Support, Paternity, Perjury, Traffic Offenses, and Violation of

Probation. All others are eligible, although for defendants charged with Murder, Rape, Arson, or Kidnapping, a much stricter standard is applied. Also, in practice, the only defendants interviewed are those charged with a felony or otherwise likely to be transferred from Municipal Court to Criminal Court (see Md. Ann. Code, Art. 26, Sec. 109-115), which means that the program virtually excludes defendants charged with Municipal Court offenses.

Most interviews occur in Municipal Court. The interview technique involves assigning a score to each defendant depending on the charges against him, his ties to the community (whether he has a stable residence, is employed, married, in school, living with family, etc.) and his criminal record, if any. Responses are verified by telephone, mail, and visits. A sufficiently high score qualifies a defendant for release recommendation. Any release order must be approved and signed by a judge. The conditions of release vary, but always include an obligation to call the Pre-Trial Release Division office once per week and to appear in court as scheduled.

With respect to determination of eligibility for publicly provided counsel, the one senior investigator currently assigned to this task conducts interviews based on a questionnaire showing the financial means of the defendant and his family. There is no objective score assigned; the experience of the investigator and the judge (who must approve counsel eligibility determinations) is the standard applied. The study group finds that the standard employed generally conforms to Principle (b) in Section 1 above, with one exception: there is an assumption, implicit in the fact that only defendants in jail are interviewed for counsel eligibility, that if a defendant can afford to post bond, he can also afford his own lawyer. This assumption is specifically rejected. Statistics on appointments of counsel in the present system are found in Appendix C below.

c. Performance of present pre-trial release program

The following performance measurements for the period August 9, 1968-September 11, 1970 have been computed. The "gross" release rate is 36% of all defendants interviewed. The "net" release rate, which reflects the number of revoked releases, is 33%. The actively maintained caseload has varied between 350 and 400. Of the total of 1,833 releasees since the inception of the program, only 3 (0.2%) became fugitives who could not be re-apprehended. Of the 1,833 releasees, 225 (12%) were re-arrested

for alleged new offenses before disposition of their original charges. This gives us a measurement of risk to the public safety, but it means little without other measurements to compare it with. It is impossible to compare the money bail system with the pre-trial release system in terms of re-arrests, since there are no comparable figures for bailed defendants. What about the risk of arrest in the general population of the city? In a six-month period (which is the approximate present duration of pre-trial release), about 27,500 of Baltimore City's 894,000 residents were arrested--about 3%. The arrest rate for releasees is, therefore, higher than that of the general population, but in the judgment of the study group this level of risk is a tolerable price to pay for a program which prevents the jailing of innocent defendants.

At this point, the question should be asked whether the extension of pre-trial release recommended by this Report will increase the percentage of re-arrested defendants. There is no reason to expect such an increase. However, performance of the extended program should be monitored carefully (see Section 1, Principle (d) above), and the strictness of criteria should be increased if the re-arrest level becomes unacceptably high.

6. The Present Bail System* and Recommended Changes

At present, the amount of bail depends, in almost every case, solely on the offense with which the defendant is charged. The usual practice is to set the amount by reference to a schedule, which indicates a fixed amount for each specific type of charge. The rigidity of this system shows that calculations of risk of non-appearance and risk to the public safety play no part in it. In fact, the defendant himself plays no part in it. For example, if there is more than one charge against the defendant, a separate bail amount is set for each charge, even though the risk of non-appearance is the same for each charge since the same defendant must appear in court on all the charges. The practice of using a schedule of bail amounts determined by the type of offense charged does have the virtue of simplicity, but it is sharply in conflict with the principles in Section 1 above, and carries with it the suggestion of imposing penalties before trial.

In the present system, the bondsman, in effect, decides whether release of the defendant will occur; the clerk or the judge has set the bail amount, but it is up to the bondsman to determine whether the defendant is a safe risk. In other words, the court, after setting the amount, loses control over the decision to release, and the bondsman makes it, employing criteria not subject to court regulation. Another function of the bondsman is to ensure that the defendant appears in court as scheduled, and to attempt

*See the ABA Standards Relating to Pre-Trial Release, pp. 61-65, for an analysis consistent with these findings.

to locate him if he fails to appear. How effective is the bondsman? The only relevant data we have concerns bail forfeitures.

There is a low rate of forfeiture in the Criminal Court. Of about $9.8 million total bail per year in that court in 1970, only about $32,000 was forfeited--less than 1%. Comparable figures for Municipal Court are not available. Without further analysis,* the significance of this low forfeiture rate is unclear. One possible explanation is that the present bail system is very effective in bringing defendants into court for scheduled appearances. Another possible explanation is that the court is lenient with bondsmen. An examination of the bail docket in Criminal Court shows that bailed cases are often postponed and that forfeiture orders are often stayed. What we do not know is how often a bailed defendant fails to appear for a scheduled appearance. (We also do not know this statistic for defendants released without bail.) We do not know how many bailed defendants become fugitives and are never brought to trial; however, for defendants handled by the present Criminal Court pre-trial release program, only 3 out of 1,833 releasees became "lost" fugitives. Finally, we do not know what percentage of bailed defendants are re-arrested while awaiting trial. For the present pre-trial release program, this percentage is 12%.

Bail bonding is a large and evidently profitable business in Baltimore City. Total bail in Municipal Court was about $37.4 million in fiscal 1969

*Collection of data to explain the forfeiture rate was not possible within the funding of this study.

(about $30.0 million in Traffic Division and $7.4 million in Criminal Division), and about $9.8 million in Criminal Court in calendar 1970. Combining the two figures (the latest available for each court) gives us an annual total of about $47 million. The seven surety companies who handle almost all this business were allowed by the Rating Division of the State Insurance Commission to charge fees of 7% of the first $2,000, 5% of amounts in excess of $2,000, and a miminum fee of $25.

In criminal cases, the function of the bail bondsman would obviously be reduced to a minimum by adoption of the pre-trial release principles and procedures enunciated in Sections 1 and 2 above. The staff recommended in Section 3 will enable the judiciary to assume responsibility for all pre-trial release of criminal defendants in Baltimore City. In our judgment, pre-trial release of criminal defendants should be managed as a whole by the judiciary; hence, we have recommended that all pre-trial release programs in both Municipal Court and Criminal Court be administered by a new judicial officer, the Administrative Officer of the Eighth Judicial Circuit. (See Part VI of this Report.) Whatever function the professional bail bondsman might continue to have in a system which relies primarily on release without bail, we find that, in criminal cases, the decision to grant or deny freedom prior to trial, and the supervision of released defendants, are inherently judicial functions, and should not be "contracted out." With direct judicial control of pre-trial release of criminal defendants, the rights of defendants and the public can be protected

by comprehensive reports of release statistics, e.g., the percentage of failures to appear in court as scheduled and the rate of re-arrest of releasees, so that performance of the pre-trial release program can be evaluated.

In traffic cases, further study is needed of the bondsrnan's role and alternatives to it, in the context of the entire driver control problem. The volume of traffic bail bonding is so enormous (about $30 million per year in Baltimore City) that, without adequate prior study, it would hopelessly overburden the Traffic Division of Municipal Court to give it exclusive responsibility with regard to pre-trial release of traffic defendants.

7. Regulation of Bail Bonding

Regulation of bondsmen was attempted by the City Council of Baltimore. The Court of Appeals held that the City Council regulation was in conflict with the state statute (Md. Ann. Code, Art. 48A), which authorizes the Insurance Commissioner to regulate insurance companies. (See Mayor and City Council v. Stuyvesant Insurance Co., 226 Md. 879.) No regulations concerning the bail business have ever been issued by the Insurance Commissioner. We recommend that the Insurance Commissioner, in consultation with the Chief Judge of the Court of Appeals and the Chief Judge of the new District Court, formulate appropriate regulations regarding bail bonding.

APPENDIX C:

DEFENSE SERVICES FOR THE INDIGENT IN MUNICIPAL COURT AND CRIMINAL COURT

Outline of Appendix C

APPENDIX C: Defense Services for the Indigent in Municipal Court and Criminal Court

1. Scope of the Right to Publicly Provided Counsel

The Declaration of Rights of the Maryland Constitution provides as follows:

> "That in all criminal prosecutions, every man hath a right ... to be allowed counsel ..." (Article 21)

This right, with respect to the indigent defendant, is spelled out elaborately in Rule 719(b) of the Maryland Rules. In 1965, the Court of Appeals held that this rule applies to Municipal Court as well as the Circuit Courts of the state (Criminal Court being, of course, part of the Eighth Circuit Court); see Manning v. Md., 237 Md. 349, 206 A. 2d 563. As far as the new District Court is concerned, the District Court Rules Committee will draft a rule on counsel for the indigent, but the indication is that it will not differ in any relevant respect from Rule 719(b). Rule 719(b) provides as follows:

> "1. Advice by Court.
> If at any stage of the proceeding, the accused appears in court without counsel, the court shall advise him of his right to counsel.
> 2. When Required--Conditions.
> Unless the accused elects to proceed without counsel or is financially able to obtain counsel --
> (a) The court shall assign counsel to represent him if the offense charged is one for which the maximum punishment is death or imprisonment for a period of six months or more, or a fine of $500.00 or more, or both; provided that notwithstanding the foregoing, counsel need not be

assigned where the offense charged is desertion or non-support of wife, children or destitute parents.

(b) The court may assign counsel to represent the accused in any other case, and in determining whether or not to assign counsel the court shall take into consideration the complexity of the case, the youth, inexperience and mental ability of the accused and any other relevant consideration.

3. Request for Counsel.

If any accused who is not financially able to obtain counsel requests assignment of counsel, the court shall assign counsel pursuant to subsection 2 of section b of this rule.

4. Assignment Procedure.

The Circuit Court for any county and the Supreme Bench of Baltimore City may establish by rule appropriate local procedures to implement and regulate the exercise of the right established in section b of this Rule. These procedures may include provision for assignment of counsel by persons designated by the court or by any other reasonable method and need not require the personal presence of the defendant in court at the time of the assignment.

5. Affidavit of Indigency.

The court may require a claim of indigency by an accused seeking the assignment of counsel to be verified by a sworn statement in such form and with such content as the court designates.

6. Counsel - Extent of Duty.

When counsel is appointed by the court to represent an accused, the authority and duty of such counsel shall continue in all respects from the date of such appointment until the imposition of sentence. Thereafter counsel shall advise the accused concerning his right to appeal and his right to apply for a review of his sentence. If directed by the accused, counsel shall assist in the preparation of an application for review of sentence under Rule 762 (Review of Sentence) and an order for appeal, and shall file same over the signature of the accused."

What about payment of counsel? When Rule 719(b) says "The court shall assign counsel," it is clear from the context that this assigned counsel will not serve at the defendant's expense. Article 26, Section 12 of the

Maryland Annotated Code requires that any payment for the services of appointed counsel in the Criminal Court be paid by the Mayor and City Council, but there is no provision for paying counsel in Municipal Court. However, Chapter 528 of the Laws of Maryland, 1970, the legislation implementing the District Court Constitutional Amendment, provides:

> "Every District Court judge shall have the power to appoint counsel to represent indigent defendants within the jurisdiction of the court and shall have the authority to grant fees to said attorneys as prescribed by law or rule, which shall be paid by the State of Maryland." (Sec. 145(b)(8))

This provision will be in effect as of July 5, 1971, unless the Legislature amends it. Our interpretation of Rule 719(b) and Chapter 528 of the 1970 Laws is that they are not inconsistent with the type of system we recommend, namely, a publicly funded, independent defense counsel agency serving both Municipal Court and Criminal Court, which would handle all appointments and payment of counsel for indigent criminal defendants as well as a staff of salaried full-time public defenders. We recommend adoption of the following principle: attorneys representing indigent defendants should be paid for their work at a reasonable rate, and, for a criminal justice system as large as Baltimore City's, the source of payment should be public funds rather than private charity.

Rule 719(b) establishes which defendants are entitled to free defense counsel; the next question is when (at what stage of the criminal process) they are entitled to it. Our interpretation of the applicable law is that

Rule 719(b) defendants are entitled to counsel at their first court appearance and therefore that the investigation of their eligibility (indigency) must occur prior to the first court appearance. Our reasoning is as follows:

a. Coleman v. Alabama (__U.S.__, 26 L.Ed.2d 387, 1970) held that the preliminary hearing is a critical stage in the criminal process and that, therefore the presence of counsel is required at the preliminary hearing to protect the defendant's constitutional rights.

b. A preliminary hearing, within the meaning of Coleman, is an initial court appearance where a determination is made whether there is sufficient evidence against the accused to warrant proceeding with his case, and a determination as to bail or other pretrial release is made. In the Baltimore City Municipal Court, proceeding with the case means either presenting it to the Grand Jury or proceeding with trial in the Municipal Court or Criminal Court.

c. A defendant has a right to a preliminary hearing in Maryland.

d. Since Rule 719(b) defendants have a right to a preliminary hearing at their first court appearance, they have a right to counsel at that appearance.

For an extensive analysis of the right to a preliminary hearing, see the brief by Jo Ann Raphael and Edwin Villmoare filed in the case of Bates v. Warden, Baltimore City Court, File No. 9-085283. By permission of the authors, a copy of this brief, along with a copy of the opinion of the State Attorney General on this subject, is submitted as an attachment in the distribution of this Report.

2. Present Defense Service for the Indigent in Baltimore City Criminal Courts

a. Criminal Court

In the Criminal Court of Baltimore City, judges appoint counsel for

about 2500 defendants each year, at a cost of $275,000, or about $110 per appointment. Appointments are individually made by each judge, and the coordination of the appointments is, at best, only informal and voluntary. The amount of the fee is discretionary; there is no schedule relating fee to work hours, or to the nature of the case.

In the Criminal Court, eligibility for publicly provided counsel is determined by an Investigator from the Pre-Trial Release Division, whose procedure is discussed in Appendix B, Section 5(b) of this Report. The test of indigency employed by the Investigator is rather subjective but generally reasonable. However, we recommend that the standard used in the new program be that which is presently used by the Legal Aid Bureau of Baltimore City and devised by the Office of Economic Opportunity (see recommendations below). The standard of the Pre-Trial Release Division is inappropriate in terms of the program we recommend for two reasons:

- o It is subjective, somewhat vague, and therefore difficult to employ in a high-caseload program; in contrast, the Legal Aid - OEO standard is quite objective.

- o It implicitly assumes that if a defendant can manage to pay for release on bail, he can afford to hire his own lawyer.* The Investigator's interviews for counsel eligibility are restricted almost completely to defendants in City Jail, most of whom are there because they cannot afford bail. Such defendants would, no doubt, be considered indigent under any reasonable standard. Those who can afford bail or who obtain pre-trial release,

*We recommend that this assumption be explicitly rejected in indigency standards; see Section 6.1 of the American Bar Association Standards Relating to Providing Defense Services quoted in Appendix B, Section 1 of this Report, and Principle (b) following it.

however, are rarely interviewed. The Criminal Court presently makes about 5000 appointments of counsel per year, and yet we estimate that 4400 Criminal Court defendants per year are eligible for counsel under Rule 719(b) and the Legal Aid - OEO standard.

b. Municipal Court

With respect to the indigent Rule 719(b) defendant in Municipal Court, there are three possible outcomes, so far as defense counsel is concerned.

(1) If interviewed by the present interim Legal Aid Bureau Public Defender Program, either on the defendant's initiative or Legal Aid's, the defendant may or may not be found eligible under the OEO indigency test (see Section 3(b) below). If he is found indigent, the court will usually -- but not always -- appoint Legal Aid to represent him.

(2) If not interviewed prior to first court appearance by Legal Aid, the defendant is usually advised of his right to counsel by the judge, and usually told that counsel can be appointed for him if he cannot afford counsel. He is sometimes not told that there are Legal Aid attorneys present who can represent him. If the defendant indicates that he wants counsel appointed, the court can appoint Legal Aid, appoint a private attorney present in the court, or forward the request to the Deputy Clerk for appointment of private counsel, which may take several weeks.

(3) The defendant may indicate that he wishes to waive his right. The acceptance of waiver by the court is usually automatic, without an effort to understand whether the defendant understands his right.

With regard to representation by the Legal Aid Bureau, the present program cannot possibly be adequate to supply the existing demand, as measured by the number of indigent Rule 719(b) defendants per year. This is explained by statistics in subsection (d) below. With regard to appointment of private

counsel, it has already been noted that there is presently no provision for payment of appointed counsel in Municipal Court. Consequently there has been a reliance on the bar for voluntary efforts, and a notable reluctance by the bar to accept the duty. Also, if the defendant is not informed by the judge that Legal Aid can represent him, he may be deterred from accepting the offer of appointed private counsel; obtaining such appointment may take several weeks, and in the absence of an adequate pre-trial release program, these weeks will be spent in jail. The alternative of a speedy trial, without representation, is frequently preferred. Finally, it is important to emphasize that the acceptance of waiver of the right to counsel is quite perfunctory and inconsistent with the strict waiver standards recommended in Appendix B of this Report.

c. The interim public defender program

As a result of Coleman v. Alabama, there is an interim public defender system administered by the Legal Aid Bureau of Baltimore City, funded by a grant from the Governor's Commission on Law Enforcement of about $80,000 for the period September through December 1970. It has a staff of nine attorneys; in contrast, the State's Attorney's Office has assigned more than twice that number (twenty attorneys) to prosecution in the Criminal Division of Municipal Court. In its first 66 days of actually representing defendants (September 25 through November 30), the program disposed of cases involving 506 defendants. Of these, 317 (63%) were

represented at preliminary hearings because their cases involved charges outside the jurisdiction of Municipal Court (mostly felonies but also certain misdemeanors), and in many instances in later Municipal Court trials after reduction of charges at the preliminary hearing. The rest, 189 (37%) were charged with misdemeanors for the most part, and were represented in Municipal Court trials. Under the terms of the grant, there was no representation at the Criminal Court level. The program has had quite an impact already on preliminary hearings. In the past, such hearings almost invariably resulted in the defendant being held for Grand Jury action; in the first 66 days of the program, 138 (44%) of the preliminary hearing defendants represented by Legal Aid were not held for Grand Jury; 89 (28%) were dismissed, acquitted, nolle prosequi, stet, or sentenced to probation (before or after verdict) without fines; and only 49 (15%) were sentenced to fines or jail.

d. Citywide need for free defense counsel

What is the current number of criminal defendants who would qualify for free defense counsel under Rule 719(b) and other applicable law? Virtually all criminal defendants enter the criminal process via arrest. There were about 49,000 adult defendants arrested for non-traffic offenses during 1969 (see Appendix A), and about 30,000 of these were charged with Rule 719(b) offenses. The best available data indicates that the indigency rate among such defendants is about 50 percent, using the Legal Aid Bureau -

OEO definition of indigency. This gives us a figure of about 15,000 defendants per year requiring free (publicly provided) counsel; almost all of these defendants appear first in Municipal Court, and probably about 4,400 are transferred to Criminal Court, where they continue, of course, to require counsel.

The above estimate of 15,000 indigent Rule 719(b) defendants is valid for 1969, reasonably good for 1970, but not likely to be accurate in 1971. A number of new factors which appeared in the latter half of 1970 will have a combined effect on the total number of defendants. Some of these factors can be measured or estimated separately, but it is impossible using presently available data to predict the combined effect. (Therefore we will continue to use the 15,000 figure as the best presently available estimate.) The following are some of the new factors:

- The transfer of 16- and 17-year-old defendants to the jurisdiction of Juvenile Court by court decision in August 1970: As Appendix A, Section 2 points out, this factor by itself would probably have the effect of reducing the number of defendants handled by the Criminal Division of Municipal Court by about 12%.

- Changes in total arrests: The total of arrested defendants will probably drop somewhat in 1970 and 1971, in keeping with a general downward trend since 1965.

- Screening and diversion programs: Prosecutorial screening and in-court social service diversion of the kind recommended in this Report will have a significant effect in lowering the intake of Municipal Court, in lowering the intake of Criminal Court, and in increasing remands to Municipal Court from Criminal Court.

- o Counsel at preliminary hearings: The above estimate of 4400 indigent defendants per year transferred from Municipal Court to Criminal Court overlooks the powerful effect of the presence of counsel at preliminary hearings. In the past, almost all preliminary hearings have resulted in the defendant being held for the Grand Jury. However, a report on the first month of operation of the Legal Aid Bureau interim public defender system indicates that about 44% of the indigent defendants are being dismissed or tried on reduced charges in Municipal Court. If this effect continued, it would have the effect, by itself, of reducing the estimated 4,400 to 2,500.

- o Jurisdictional changes: The jurisdiction of the Criminal Division of Municipal Court will be affected when it becomes part of the new District Court on July 5, 1971, pursuant to the District Court Constitutional Amendment and Chapter 528 of the Laws of Maryland 1970. Section 145(b) will cause what is now Muricipal Court to lose some jurisdiction and gain other jurisdiction; the net impact cannot be measured with existing data.

How many of the estimated 15,000 indigent Rule 719(b) defendants are represented by counsel? There are a minimal number of appointments of private counsel in the Criminal Division of Municipal Court, approximately 1,200 per year. The interim public defender program disposed of the cases of 506 defendants in 66 days, which (if extended) would amount to 2,800 defendants disposed per year. In other words, the available evidence indicates that, even if the current public defender program is extended after January 15 (when its present funding expires), only about 4,000 of the estimated 15,000 (per year) indigent Rule 719(b) defendants are represented by counsel in Municipal Court, and that, of the 4,400 such defendants transferred from Municipal Court to Criminal Court only about 2,500 are

represented in Criminal Court. The conclusion is obvious: most eligible indigent defendants are unrepresented.

3. Recommendations

a. General recommendations. We recommend the creation of a system of defense service for the indigent criminal defendant limited to Baltimore City which will serve both Municipal Court and Criminal Court, and which will be a combination of salaried full-time public defenders and assigned private counsel paid by fee. We further recommend that the entire system be governed by an independent board of trustees, appointed by the Chief Judges of the Court of Appeals, the Supreme Bench, and the Municipal Court, and that this board appoint a program director who will manage the defense service system, supervise salaried defenders, and appoint private counsel. This arrangement resembles the D. C. Court Reform and Criminal Procedure Act of 1970 (quoted in Section 4 below).

The recommendation that the defense system extend to both courts is based on the need for economical use of resources and the stringent requirement of continuity of criminal defense imposed by Rule 719(b)(6) of the Maryland Rules. While it may not always be possible or desirable to keep the same individual attorney on a case throughout the criminal process, it is possible at least to provide continuity by managing all defense service through one central agency.

The recommendation that the system be governed by an independent

board rests on principles lucidly expressed by the American Bar Association Standards Relating to Providing Defense Services:

> "The plan should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. One means for assuring this independence, regardless of the type of system adopted, is to place the ultimate authority and responsibility for the operation of the plan in a board of trustees. Where an assigned counsel is selected, it should be governed by such a board. The board should have the power to establish general policy for the operation of the plan, consistent with these standards and in keeping with the standards of professional conduct. The board should be precluded from interfering in the conduct of particular cases." (Sec. 1.4)

The recommendation that the defense system be a combination of salaried full-time public defenders and assigned private counsel paid by fee is based on a number of important considerations, of which the material extracted from the District of Columbia Court Management Study in Section 4 below is illustrative. These considerations are as follows:

> (1) Defense systems which consist solely of full-time salaried public defenders may tend to bureaucratic stagnation. Quoting Dean Morad Paulsen:
>
> "A public defender or a defender organization, reasonably financed, can carry a considerable load, yet such organizations may become trapped by routine... As time goes on the defender organization may become less vigorous in defense as compared to a privately retained lawyer. Adding cases to the work of the defender organization can only bring pressure for more

routinization."
(Mass Production Justice and the Constitutional Ideal, C.W. Whitebread, Ed., The Michie Co., 1970; p. viii)

(2) The private bar should be involved in the defense of the indigent, both as a public service and because the bar should never lose touch with the criminal law.

(3) In cases with multiple defendants, assigned counsel can be employed to avoid the conflict inherent in representation of codefendants by the same public defender group.

(4) Assigned private counsel can be mobilized to help when there is an overflow of cases, e.g. during a civil disorder.

(5) Special cases of great complexity can be handled by the assigned counsel component so that the public defender group is not totally absorbed or weakened by the extraordinary requirements.

The recommendation that the defense system be limited to Baltimore City is based on the view the city has unique problems and that diversity is needed in providing defense services to the various jurisdictions of the state. It would be a mistake, we believe, to attempt at this time to create a single uniform state-wide system. Montgomery County has a system designed for its needs, and other counties have quite different kinds of needs. The local variation could be handled by an overall defense coordinator who would set minimum standards for defense service financed in the state judicial budget.

b. Specific recommendations. We recommend that the test of indigency for the purposes of applicability of Rule 719(b) of the Maryland

Rules in all criminal courts of Baltimore City be the test presently used by the Legal Aid Bureau of Baltimore City and devised by the Office of Economic Opportunity. Investigation of defendants for indigency, i.e. for eligibility for free defense counsel, should be performed by the pre-trial release investigative staff recommended in Appendix B of this Report. Although there are exceptions for individual hardship situations, the Legal Aid--OEO standard is basically as follows:

Single, no dependents	$50/wk. or less take-home pay
Married, no dependents	$70/wk. or less take-home pay
Married, 1 dependent	$79/wk. or less take-home pay
Married, 2 dependents	$87/wk. or less take-home pay
Married, 3 dependents	$94/wk. or less take-home pay
Married, 4 dependents	$100/wk. or less take-home pay
Married, more than 4 dependents	Weekly maximum take-home pay is $100 plus $5 for each dependent in excess of 4

We further recommend the following staffing arrangement in the Criminal Division of Municipal Court and the Criminal Court: a staff of 29 full-time salaried attorneys (public defenders); a supporting staff of ten investigative assistants (para-professionals or law students) who will assist in interviewing witnesses and otherwise gathering evidence, and

five clerical-secretarial personnel.* This basic public defender staff should be supplemented by assignments of private attorneys with reasonable compensation; assignments should be made by the director of the program in accordance with the considerations listed in Section 3 above ("General recommendations").

The recommended basic public defender staff should be flexibly assigned to all courts as needed. The staff was computed by estimating the average requirements of attorneys operating under the partial centralization recommended in Part V of this Report and a certain number for Criminal Court. This was not done on a strict workload basis. The current Municipal Court staff of seven full-time equivalent attorneys (actually nine men, but each now devotes only about 75% of his time to the public defender program) is handling the equivalent of 2,800 defendants per year; the estimated total eligible defendants is 15,000 per year, over five times what is currently handled. Instead of recommending a five-fold increase (to 35) of defense attorneys, which is absurd, we contend that "economies of scale" are possible with an average work force of twenty attorneys, assigned on an as-needed basis to each of the Municipal Courts. The figure of twenty attorneys is arrived at in two ways. First, it is the number of prosecuting attorneys now assigned to the

*Further support, with respect to indigency investigation, will be provided by the Pre-Trial Release staff recommended in Appendix B of this Report.

Criminal Division of Municipal Court (excluding Housing Court) by the State's Attorney's Office; parity of resources for defense and prosecution is a reasonable criterion. Secondly, twenty attorneys will permit what we judge to be an adequate hourly coverage of the Municipal Courts. The needed coverage will, of course, vary from day to day, but typically it will be as follows: one 56-hour-per-week position in each of the three lower workload courts (a total of five attorneys), and two 56-hour-per-week positions for each of the four higher workload courts (a total of fourteen attorneys). (Each 56-hour-per-week position requires approximately 1.7 full-time men. Under the partial centralization recommended in Part V of this report, the three lower workload courts are Western, Northwestern, and Southeastern, and the four higher workload courts are Eastern, Central, Southern, and the new Preliminary Hearing Court in the Central District.) For the Criminal Court, where the bulk of the assigned counsel component of the recommended program is expected to be used, we foresee a need for, on the average, only one salaried defense attorney for each of the eight courts. To this we add one attorney as trial supervisor, and one more as program director, for a total of twenty-nine attorneys. The ten investigative assistants are recommended based on a ratio of three attorneys per investigator, i.e. one-third day of investigative assistance for each working day of a Public Defender.

How many defendants can be represented by allowing $120,000 per

year--as we recommend--for assignments of private counsel? This question cannot be answered exactly. The 1969 average fee for appointment of private counsel in Criminal Court was about $110; this divided into $120,000 would give us about 1,090 appointments per year. For the fiscal year 1968-9, the average cost (fee plus expense) per defendant for assigned counsel in the District of Columbia Court of General Sessions was about $48 (see 1969 Annual Report of the Director of the Administrative Office of the U.S. Courts, p. 329). This would give us 2,500 appointments per year. Since decisions about assignment of private counsel and fees are left to the sound judgment of the program director, we can only say that the use of assigned counsel should lighten the load of the public defenders by at least one thousand defendants per year.

We estimate costs for the program recommended above at $645,800 per year. The figure is based on the expenditure levels in the table below:

27 Attorneys (Public Defenders) @ $10,000	$270,000
1 Supervising Attorney @ $18,000	18,000
1 Program Director @ $20,000	20,000
10 Investigative Assistants @ $8,000	80,000
5 Clerk-Secretaries @ $6,000	30,000
Total direct salaries	$418,000
Recommended allocation for fees for assigned private counsel	$120,000
Other Personnel Costs (10% of direct salaries)	$ 41,800
Operating Expense and Capital Outlay ($1,500 per employee)	$ 66,000
Grand Total	$645,800

4. Excerpts from District of Columbia Court Management Study and District of Columbia Court Reform and Criminal Procedure Act of 1970.

a. Excerpt from District of Columbia Court Management Study.

3. Defense Services

RECOMMENDATION

The legal aid agency should be empowered to coordinate the assignment process for appointing private attorneys to represent defendants who cannot afford counsel ("indigent defendants"). In performing this function, the agency would:

1. Develop and maintain a current list of attorneys capable of handling criminal cases; and
2. Recommend such attorneys for appointment to cases.

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[w] Because of the lack of capacity, the U.S. Marshal borrows 2 buses from the D.C. Department of Corrections and occasionally must borrow prisoner vans from the D.C. Metropolitan Police. However, the buses on loan from the Department of Corrections are not suitable for prisoner transport.

In administering the assignment process, the agency should assign cases equitably by giving credit to attorneys for representation in any of the courts. Volunteer attorneys may be appointed as frequently as they desire, except that some restriction may be necessary if an individual attorney's caseload becomes so large that his ability to render quality representation is affected.

DISCUSSION

NEED FOR A CHANGE

Each trial court in the District of Columbia has a different procedure for appointing lawyers to represent indigent defendants. While a plan approved by the judicial council pursuant to the Criminal Justice Act exists to coordinate appointments, in fact it has never been implemented. Appointments of counsel are made in the following manner:

UNITED STATES DISTRICT COURT

Appointments of attorneys for the district court are generally made from a roster of attorneys, of whom only a few are volunteers. Appointed attorneys receive a notice of appointment from the court and a statement of duties and suggestions for fulfilling their responsibilities. An appointed attorney is not permitted to withdraw from a case without making a formal motion to this effect or otherwise obtaining approval from the chief judge. A single clerk handles all of the appointments and no attempt is made to coordinate appointments in this court with those of any other. All newly admitted attorneys to the bar are placed on the list for appointment; other than this, no procedure exists for adding names of additional attorneys or for removing the names of attorneys who, for one reason or another, should not be receiving additional appointments. As of June 30, 1969, the list had not been revised for a number of years and was of such size that nonvolunteer attorneys were receiving appointments every 3 to 4 months. In fiscal year 1969, 2,360 defendants had counsel appointed under the Criminal Justice Act. This figure includes appointments for representation before the grand jury and the U.S. Commissioner. During that period, 2,197 indictments were returned in the district court (many indictments involve multiple defendants).

In fiscal year 1969, the Legal Aid agency handled 167 cases in the District Court and 350 hearings before the U.S. Commissioner or Federal magistrates.

COURT OF GENERAL SESSIONS

The court of general sessions relies almost exclusively on volunteer attorneys to represent indigent defendants in serious misdemeanor cases. In accordance with a procedure recommended by the court management study, every morning volunteer attorneys indicate to the criminal justice program office that they are available for appointment. That office prepares a list of available attorneys and a list of defendants requiring counsel and submits the lists to the assignment court judge who makes the appointments,

usually at about 11 a.m. (Since arraignments and presentments are not scheduled until 1 p.m., newly appointed counsel thus have an opportunity to interview the defendants.)[98] The bulk of appointed cases is handled by between 30 and 40 private attorneys who concentrate their professional efforts in this Court, and, in many instances, in the district court as well.

In fiscal year 1969, 5,954 defendants had counsel appointed under the Criminal Justice Act in the court of general sessions.[99] During the same period, 23,429 serions misdemeanor charges were filed. (This figure, however, includes charges which were dropped prior to arraignment.)

The Legal Aid agency handled 1,031 misdemeanor cases in general sessions. (No records are available with regard to participation in felony preliminary hearings.)

JUVENILE COURT

Pursuant to Judge Fauntleroy's approval of a voucher for compensation under the Criminal Justice Act, effective July 1, 1969, the judicial council extended the coverage of the act to proceedings before the juvenile court. Prior to that time, the appointment of counsel was handled by a clerk who apparently selected attorneys at random from the Legal Register.

Appointments are now handled by an attorney advisor appointed by the chief judge. However, while the Criminal Justice Act now applies to the juvenile court, the provisions of the judicial council's plan remain largely unimplemented, in that:

(1) The court does not maintain a regular panel of qualified lawyers;

(2) Appointments are being made to the same 15–20 lawyers, rather than equitably distributed among members of the bar;

(3) Attorneys do not always represent persons at all stages until final disposition; and

(4) No compensation guidelines have been established.

The Legal Aid agency has been active in the juvenile court, handling 1,631 cases (spread among 12 lawyers) in fiscal year 1969. However, until November 1, 1969, much of this representation was solely for the detention hearing. At the court's request the agency was routinely representing all juveniles for whom no attorney had been appointed by the time the hearing began; continued its representation in as many cases as it felt it could handle, and dropped the remainder. This resulted in fragmented representation, often with extensive delays before another attorney was appointed to represent the child. The agency discontinued the practice of total detention hearing representation on November 1, 1969, but agreed to have four lawyers take at least five new cases per week at detention hearings and handle them to conclusion.

As indicated earlier, the judicial council plan promulgated pursuant to the Criminal Justice Act (18 U.S.C. 3006A) provides for central coordination in the development of panels of attorneys

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[98] The problems created by the system in effect prior to the implementation of this procedure are described in appendix C.

[99] Annual Report, Administrative Office of U.S. Courts, fiscal year 1969.

available for appointment and in the appointment of counsel. Despite several requests, Congress has not provided funds for the staff necessary to carry out the central coordination function and it appears that the establishment of a central coordinator's office is not to be expected within the foreseeable future.

As illustrated above, without a central coordinating staff, each court has operated in isolation with regard to the appointment of counsel for indigent defendants. Appointments in each court are not checked against those in any other court; indeed, contact among the various employees handling appointments in the courts is virtually nonexistent.

In light of the volume of cases involving appointed counsel, the absence of a comprehensive view of defense services has a number of serious consequences:

(1) Attorneys are appointed to represent indigent defendants without regard to previous or current appointments in other courts. No court gives credit for representation performed in another court. As a result some attorneys receive multiple appointments while others receive none. Further, there is no clearly defined and widely understood procedure for training attorneys in trial skills and for expanding the lists of attorneys available for appointment.

(2) Restricting appointments only to volunteer attorneys in the court of general sessions maximizes scheduling conflicts, since the number of attorneys who regularly practice in that court is small (30–40). Scheduling problems are composed because many of these attorneys also practice in the district court.

(3) Nonvolunteer attorneys, who are generally practitioners unfamiliar with criminal law, receive no formal guidance and/or assistance in the preparation of their cases. While the Legal Aid agency is available for such assistance, attorneys are generally unaware of this fact and the agency is not fully equipped for this function.

(4) Defense counsel do not have any organization to represent their views on the matters of court administration in which they are concerned, particularly with regard to the appointment and payment of counsel under the Criminal Justice Act.

THE RECOMMENDED APPROACH [100]

In view of the above problems, we believe a unitary view should be taken toward the provision of defense services. Rather than the Legal Aid agency representing some indigent defendants and the courts individually trying to arrange for representation for other indigent defendants, there should be one central agency performing both functions, i.e., providing defense services and also administering the assignment process for private attorneys. Since the Legal Aid

[100] The details of our proposal are contained in a memorandum dated May 28, 1969, entitled "Proposed Plan for Furnishing Representation for Defendants in the District of Columbia." This proposal was sent to all judges in the District of Columbia by the Committee on the Administration of Justice. After consultation with the chief judges of the D.C. Court of Appeals, the court of general sessions, and the juvenile court, a revised plan was submitted in August, 1969. (The revised plan which was also sponsored by the District of Columbia Bar Association is included in the separate volume accompanying this report.) In January, 1970, the plan was adopted by the judicial council.

agency is already providing some defense services to all the trial courts, we believe its functions should be expanded so that it also coordinates the appointments of private counsel.[101]

In administering the assignment process, the Legal Aid agency would develop and maintain up-to-date lists of attorneys capable of handling criminal cases. From the lists, the agency would recommend appointment of attorneys to represent indigent defendants.[102] The ultimate appointment authority, however, would continue to reside in the courts.

In this connection it should be noted that the American Bar Association's Advisory Committee on the Prosecution and Defense Functions (chaired by the Honorable Warren E. Burger before he became Chief Justice) recommends in its *Standards Relating to Providing Defense Services* that, ". . . The plan [for providing defense services] and the lawyers serving under it should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. One means for assuring this independence, regardless of the type of system adopted, is to place the ultimate authority and responsibility for the operation of the plan in a board of trustees." [103] While we are not making such a recommendation at this time, in the future, after the new system is operative and functioning well it may be appropriate to have the Legal Aid Agency assume complete responsibility for the provision of defense services.

In coordinating appointments, the Agency should assign cases equitably by crediting attorneys for representation in any of the courts, so that overlapping appointments and too frequent appointments of nonvolunteer attorneys can be avoided.

This proposal should not be construed as an attempt to force the volunteer attorneys out of the trial courts. As in the past, these attorneys could be appointed as frequently as they desire so long as their caseloads do not become so large that the quality of representation is affected.

To give the bar a voice in the operation of the system, we recommend that a seven-member Criminal Justice Act Advisory Board be created by the Judicial Council (augmented by the Chief Judges of the U.S. district court, District of Columbia court of appeals, court of general sessions, and juvenile court). The Board should be composed of private attorneys admitted to practice in the District of Columbia. It should meet at least quarterly to review the operations of the system for furnishing representation for indigent defendants. The Advisory Board should also hear the appeals of aggrieved attorneys regarding the appointment system and con-

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[101] Such a system is in operation in Montgomery County, Md. In discussing the role of the Public Defender's Office, the Annual Report of the Peoples' Court for the year ended June 30, 1969, states (at p. 1): "It is of great assistance to the Court to have a competent investigation for the determination of indigency and to have the office supervise a reliable system of appointing attorneys so as to spread the load equitably among the practicing bar."

[102] The proposed plan referred to above specifies that the appointed attorney represent the defendant throughout the entire length of the case or until a new attorney is appointed. With regard to appeals, section V.D provides: "In all proceedings under the Plan the attorney should advise the defendant of his right to appeal or such other legal remedies as may be available, of his right to counsel and shall, if the defendant so desires and the law allows, perfect said appeal or take such steps as are necessary to secure further remedies as may be allowed under the circumstances."

[103] Sec. 1.4, (June 1967), p. 19.

sider cases involving the voluntary or involuntary removal of attorneys from the appointment lists.

In connection with coordinating and administering the appointment process, the Legal Aid Agency should provide each appointed counsel at the outset of a case the following types of information: The defendant's criminal record, a copy of the indictment or information, appropriate police forms, general information concerning court rules, and suggested forms for the filing of suggested motions. Staff attorneys of the Agency should be available for consultation. Furthermore, the policy of the Agency should be to foster the association of experienced staff or private attorneys with inexperienced private attorneys.

This approach, coupled with an active program of continuing legal education in trial practice should lead to the gradual expansion of the pool of capable trial counsel.

We are not recommending the creation of a pure public defender system.[104] Quite apart from any considerations of cost,[105] it is our view that the preferred method for providing defense counsel for indigent defendants should involve the use of full-time paid attorneys and private attorneys. We believe that the administration of criminal justice should not become a closed system which would be the concern of only judges, prosecutors, and full-time paid public defenders. Private attorneys, who do not depend on the court for their livelihood but are generally familiar with its operations, can offer much constructive and somewhat objective criticism. (See generally, *Report of The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts* (1967), pp. 59–60).

Furthermore, by using private attorneys, the burden of providing defense services can be eased and the danger of creating a mass production defense system avoided.[106]

Our recommendations are consistent with the legislation now pending[107] regarding the Legal Aid Agency. These bills would establish the Legal Aid Agency as the Public Defender Service and would also provide for substantial use of the private bar. However, while we endorse these proposals, we believe more is needed if the major flaws in the current system are to be eliminated. The Legal Aid Agency should be given the authority and responsibility to coordinate the system for the appointment of private defense counsel. Under our approach, the courts would still have final authority to appoint counsel but they would exercise this

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[104] According to the ABA's *Standards Relating to Providing Defense Services* (*op. cit.*, p. 16) no one system has been shown to be most effective.

[105] In fiscal 1969, the staff of the Legal Aid Agency totaled 42 employees including the Director, 20 attorneys and supporting personnel. ("Annual Report, Administrative Office of U.S. Courts, Fiscal Year 1969"). $425,000 was appropriated to run the Agency. For fiscal 1970, the Agency is seeking to increase its staff of attorneys to 34. With a larger staff, the Agency expects to be able to represent as much as 50 percent of all indigent defendants in the trial courts. The estimated cost of the expanded program is $600,000.

[106] It is interesting to note that on Nov. 10, 1969, the U.S. Supreme Court agreed to rule on the adequacy of representation of indigent defendants by overworked legal and public defender offices. (No. 81, misc., *Chambers* v. *Maroney*.) In discussing this case, Fred P. Graham of the New York Times observed that, ". . . the appeal will give the Court an opportunity to explore a subject that has aroused growing concern among lawyers in recent years but that is rarely discussed by them in public—the possibility that poor defendants may actually be harmed rather than served in some instances by the public defender offices that have been created for their defense." New York Times, Nov. 11, 1969, p. 26, col. 1.

[107] H.R. 12856 and S. 2602 (91st Cong., 1st sess.).

authority within a system coordinated by the Agency (or Public Defender Service). Accordingly, we urge that the pending legislation be modified so that the coordinating powers are *centralized* in the Legal Aid Agency.

b. District of Columbia Court Reform and Criminal Procedure Act

TITLE III—PUBLIC DEFENDER SERVICE

REDESIONATION OF LEGAL AID AGENCY AS PUBLIC DEFENDER SERVICE

SEC. 301. The Legal Aid Agency for the District of Columbia is redesignated the District of Columbia Public Defender Service (hereafter in this title referred to as the "Service").

AUTHORITY OF SERVICE

SEC. 302. (a) The Service is authorized to represent any person in the District of Columbia who is a person described in any of the following categories and who is financially unable to obtain adequate representation:

(1) Persons charged with an offense punishable by imprisonment for a term of six months, or more.

(2) Persons charged with violating a condition of probation or parole.

(3) Persons subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (Hospitalization of the Mentally Ill).

79 Stat. 750.
D.C. Code 21-501.

(4) Persons for whom civil commitment is sought pursuant to title III of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3411, et seq.) or the provisions of the Hospital Treatment for Drug Addicts Act for the District of Columbia (D.C. Code, sec. 24–601, et seq.). 80 Stat. 1444.

(5) Juveniles alleged to be delinquent or in need of supervision. 70 Stat. 609.

(6) Persons subject to proceedings pursuant to section 7 of the Act of August 4, 1947 (D.C. Code, sec. 24–527) (relating to commitment of chronic alcoholics by court order for treatment). 82 Stat. 621.

(7) Persons subject to proceedings pursuant to section 927 of the Act of March 3, 1901 (D.C. Code, sec. 24–301) (relating to confinement of persons acquitted on the ground of insanity). Ante, p. 601.

Representation may be furnished at any stage of a proceeding, including appellate, ancillary, and collateral proceedings. Not more than 60 per centum of the persons who are annually determined to be financially unable to obtain adequate representation and who are persons described in the above categories may be represented by the Service, but the Service may furnish technical and other assistance to private attorneys appointed to represent persons described in the above categories. The Service shall determine the best practicable allocation of its staff personnel to the courts where it furnishes representation.

(b) The Service shall establish and coordinate the operation of an effective and adequate system for appointment of private attorneys to represent persons described in subsection (a), but the courts shall have final authority to make such appointments. The Service shall report to the courts at least quarterly on matters relating to the operation of the appointment system and shall consult with the courts on the need for modifications and improvements.

(c) Upon approval of its Board of Trustees, the Service may perform such other functions as are necessary and appropriate to the duties described above.

(d) The determination whether a person is financially unable to obtain adequate representation shall be based on information provided by the person to be represented and such other persons or agencies as the court in its discretion shall require. Whoever in providing this information knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than $1,000 or imprisoned not more than one year, or both.

BOARD OF TRUSTEES OF SERVICE

SEC. 303. (a) The powers of the Service shall be vested in a Board of Trustees composed of seven members. The Board of Trustees shall establish general policy for the Service but shall not direct the conduct of particular cases.

(b) (1) Members of the Board of Trustees shall be appointed by a panel consisting of—

(A) the chief judge of the United States Court of Appeals for the District of Columbia Circuit;

(B) the chief judge of the United States District Court for the District of Columbia;

(C) the chief judge of the District of Columbia Court of Appeals;

(D) the chief judge of the Superior Court of the District of Columbia; and

(E) the Commissioner of the District of Columbia.

The panel shall be presided over by the chief judge of the United States Court of Appeals for the District of Columbia Circuit (or in his absence, the designee of such judge). A quorum of the panel shall be four members.

(2) Judges of the United States courts in the District of Columbia and of District of Columbia courts may not be appointed to serve as members of the Board of Trustees.

(3) The term of office of a member of the Board of Trustees shall be three years. No person shall serve more than two consecutive terms as a member of the Board of Trustees. A vacancy in the Board of Trustees shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) The trustees of the Legal Aid Agency for the District of Columbia in office on the date of enactment of this Act shall serve the unexpired portions of their terms as trustees of the Service.

(d) For the purposes of any action brought against the trustees of the Service, they shall be deemed to be employees of the District of Columbia.

DIRECTOR AND DEPUTY DIRECTOR OF SERVICE

SEC. 304. The Board of Trustees shall appoint a Director and Deputy Director of the Service, each of whom shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board of Trustees may prescribe. The Deputy Director shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. The Board of Trustees shall fix the compensation to be paid to the Director and the Deputy Director without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but compensation for the Director shall not exceed the rate prescribed for GS-18 of the General Schedule and compensation for the Deputy Director shall not exceed the maximum rate prescribed for GS-17 of the General Schedule.

80 Stat. 443, 467.
5 USC 5101, 5331.
35 F.R. 6247.

STAFF

SEC. 305. (a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective defense services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but shall not exceed the compensation which may be paid to persons of similar qualifications and experience in the Office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

(b) No attorney employed by the Service shall engage in the private practice of law or receive a fee for representing any person.

FISCAL REPORTS

84 STAT. 657

SEC. 306. (a) The Board of Trustees of the Agency shall submit a fiscal year report of the Service's operations to the Congress of the United States, to the chief judges of the Federal courts in the District of Columbia and of the District of Columbia courts, and to the Commissioner of the District of Columbia. The report shall include a statement of the financial condition of the Service and a summary of services performed during the year. Report to Congress.

(b) The Board of Trustees shall annually arrange for an independent audit to be prepared by a certified public accountant or by a designee of the Administrative Office of the United States Courts.

APPROPRIATIONS, GRANTS, AND CONTRIBUTIONS

SEC. 307. (a) For the purpose of carrying out the provisions of this title, there are authorized to be appropriated for each fiscal year, out of any moneys in the Treasury to the credit of the District of Columbia, such sums as may be necessary to implement the purposes of this title. Such sums shall be appropriated for the judiciary to be disbursed by the Administrative Office of the United States Courts to carry on the business of the Service. The Administrative Office, in disbursing and accounting for such sums, shall follow, so far as possible, its standard fiscal practices. The budget estimates for the Service shall be prepared in consultation with the Commissioner of the District of Columbia.

(b) Upon approval of the Board of Trustees, the Service may accept public grants and private contributions made to assist it in carrying out the provisions of this title.

TRANSITION PROVISION

SEC. 308. All employees of the Legal Aid Agency for the District of Columbia on the date of enactment of this Act shall be deemed to be employees of the Service and shall be entitled to the same compensation and benefits as they are entitled to as employees of the Legal Aid Agency for the District of Columbia.

REPEAL

SEC. 309. The District of Columbia Legal Aid Act (D.C. Code, secs. 2-2201 to 2-2210) is repealed. 74 Stat. 229.

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